

TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION

Control 335 Department or Agency Environmental Management  
Rule No. 335-6-6-.02  
Rule Title: Definitions

         New        X   Amend               Repeal               Adopt by Reference

Would the absence of the proposed rule significantly harm or endanger the public health, welfare, or safety?          NO

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 facets 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 *Mindy Elliott*

Date December 19, 2011

Date Filed 

APA-2  
11/96

**DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
WATER DIVISION**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

**RULE NO. & TITLE:** 335-6-6-.02 Definitions  
335-6-6-.05 Duration of Permits

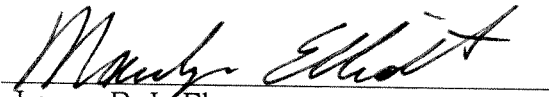
**INTENDED ACTION:** The Alabama Department of Environmental Management proposes to revise division 335-6, Water Quality Program.

**SUBSTANCE OR PROPOSED ACTION:** Revisions to rules 335-6-6-.02 and 335-6-6-.05 are being proposed to make clarifications to the duration of a National Pollutant Discharge Elimination System (NPDES) permit where construction of the permit facility has not begun within eighteen (18) months of the permit's issuance.

**TIME, PLACE, MANNER OF PRESENTING VIEWS:** Comments may be submitted in writing or orally at a public hearing to be held February 3, 2012, at 10:00 a.m. at the offices of the Alabama Department of Environmental Management, 1400 Coliseum Blvd, Montgomery, AL 36109, or by mail to P.O. Box 301463, Montgomery, AL 36130-1463.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:** February 3, 2012 at 5:00 p.m.

**CONTACT PERSON AT AGENCY:** Vernon H. Crockett, Chief  
Stormwater Management Branch – Water Division  
[334/271-7974]

  
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Lance R. LeFleur  
Director

**335-6-6-.02 Definitions.** Wherever used in this rule, unless a different meaning clearly appears from the context or unless a different meaning is stated in a definition applicable to only a portion of this rule, the following shall mean:

(a) "Applicable Standards and Limitations" means all state, interstate, and federal standards and limitations to which a "discharge" or a related activity is subject under the FWPCA and AWPCA, including "effluent limitations," water quality standards, standards of performance, toxic effluent standards or prohibitions, "best management practices," and pretreatment standards under Sections 301, 302, 303, 304, 306, 307, 308, 403, and 405 of the FWPCA and their implementing regulations and the AWPCA and its implementing rules.

(b) "Application" means forms, and additional information that are required by rule 335-6-6-.08 to be submitted when applying for an NPDES permit.

(c) "Average Monthly Discharge Limitation" means the highest allowable average of "daily discharges" over a calendar month, calculated as the sum of all "daily discharges" measured during a calendar month divided by the number of "daily discharges" measured during that month (zero discharge days shall not be included in the number of "daily discharges" measured). When an EPA approved method is used by the permittee, a value of less than the Minimum Level (ML) shall be considered zero for purposes of calculating the average monthly discharge of the substance. For example, if a discharge is monitored on three days during a month and the results of testing for a substance on those three days are 1, 2, and less than the ML the average monthly discharge is equal to  $1 + 2 + 0$  divided by 3 which would equal 1.

(d) "Average Weekly Discharge Limitation" means the highest allowable average of "daily discharges" over a calendar week, calculated as the sum of all "daily discharges" measured during a calendar week divided by the number of "daily discharges" measured during that week (zero discharge days shall not be included in the number of "daily discharges" measured). When an EPA approved method is used by the permittee, a value of less than the Minimum Level (ML) shall be considered zero for purposes of calculating the average weekly discharge of the substance. For example, if a discharge is monitored on three days during a week and the results of testing for a substance on those three days are 1, 2, and less than the ML, the average monthly discharge is equal to  $1 + 2 + 0$  divided by 3 which would equal 1.

(e) "ASMC" shall mean the Alabama Surface Mining Commission.

(f) "Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of "waters of the state." BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(g) "Bypass" means the intentional diversion of waste streams from any portion of a waste treatment facility.

(h) "Construction" means that the owner or operator has:

1. begun, or caused to begin as part of a continuous on-site construction program:

(i) any placement, assembly, or installation of facilities or equipment; or

(ii) significant site preparation work including clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or

2. entered into a binding contractual obligation for the purpose of placement, assembly, or installation of facilities or equipment which are intended to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under the paragraph.

(i) "Contiguous Zone" means the entire zone established by the United States under Article 24 of the Convention on the Territorial Sea and the Contiguous Zone.

(ii) "Continuous Discharge" means a "Discharge" which occurs without interruption throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(k) "Daily Discharge" means the discharge of a pollutant measured during any consecutive 24-hour period in accordance with the sample type and analytical methodology specified by the discharge permit.

(l) "Department" means the Alabama Department of Environmental Management, established by the Alabama Environmental Management Act, Code of Alabama 1975, §§22-22A-1 to 22-22A-16.

(m) "Director" means the Director of the Department or an authorized representative.

(n) "Discharge" means the addition, introduction, leaking, spilling, or emitting of any sewage, industrial wastes, pollutant or other wastes into waters of the state.

(o) "Discharge Limitation" means any restriction imposed by the Director on quantities, discharge rates, concentrations or other characteristics of "pollutants" which are "discharged" into "waters of the state."

(p) "Discharge Monitoring Report" or "(DMR)" means the form approved by the Director to accomplish reporting requirements of an NPDES permit.

(q) "Discharger" means a "person" who discharges a "pollutant(s)" into a "water of the state."

(~~qr~~) "Domestic Discharger" means a "person" who discharges only "domestic wastewater."

(~~rs~~) "Domestic Wastewater" means wastewater from residences and other wastewaters of similar composition and strength and does not mean wastewater generated by industrial processes.

(~~st~~) "Draft Permit" means a document indicating the Director's tentative decision to issue or deny, modify, revoke and reissue, terminate, or reissue a "permit." A notice of intent to terminate a permit, and a notice of intent to deny a permit are types of "draft permits." A denial of a request for modification, revocation and reissuance, or termination is not a "draft permit." A "proposed permit" is not a "draft permit."

(~~tu~~) "Effluent Limitations" means any restriction imposed by the Environmental Protection Agency under Section 304(b) of the FWPCA (usually referred to as effluent limitation guidelines) on quantities, discharge rates, and concentration of pollutants which are discharged into waters of the state.

(~~uv~~) "General Permit" means a NPDES Permit issued for a class of dischargers located in a defined area and, meeting the requirements of ADEM Admin. Code r. 335-6-6-.23.

(~~vw~~) "Indirect Discharger" means a nondomestic discharger who discharges "pollutants" to a "publicly owned treatment works (POTW)", or a "privately owned treatment facility" operated by another person.

(~~wx~~) "Interim Minimum Level" (Interim ML) is calculated when a method-specific ML does not exist. It is equal to 3.18 times the method-specified MDL.

(~~xy~~) "Load Allocation" or "LA" means the portion of a receiving water's loading attributed to either one of its existing or future non-point sources of pollution or to natural background.

(~~yz~~) "Major Facility" means any facility or activity discharging to a "water of the state" and classified as such by the Regional Administrator.

(~~zaa~~) "Maximum Daily Discharge Limitation" means the highest allowable "daily discharge."

(~~abb~~) "Method Detection Limit" (MDL) means the minimum concentration of an analyte that can be measured and reported with 99 percent confidence that the analyte concentration is greater than zero as determined by a specific laboratory method (40 CFR Part 136) (1994).

(~~bcc~~) "Minimum Level" (ML) means the concentration at which the entire analytical system must give a recognizable signal and acceptable calibration point. The ML is the concentration of the lowest calibration standard analyzed by a specific analytical procedure, assuming that all the method-specified sample weights, volumes, and processing steps have been followed.

(~~ee~~dd) "Municipal Wastewater" means any wastewater discharged to a POTW and includes domestic and industrial wastewater.

(~~eee~~) "National Pollutant Discharge Elimination System" or "(NPDES)" means the national program for issuing, modifying, revoking and reissuing, terminating, monitoring and enforcing permits for the discharge of pollutants into waters of the state.

(~~eeff~~) "New Discharger" means any person who from any building, structure, facility or installation:

1. is discharging a pollutant(s) or may discharge a pollutant(s),
2. who did not commence the discharge of pollutants at a particular site prior to August 13, 1979 and which is not a new source, and
3. who has never received a final effective NPDES permit for discharges at that site.

(~~egg~~) "New Source" means:

1. a new source as defined for coal mines by 40 CFR Part 434.11 (1994); and
2. any building, structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced:
  - (i) after promulgation of standards of performance under Section 306 of FWPCA which are applicable to such source; or
  - (ii) after proposal of standards of performance in accordance with Section 306 of the FWPCA which are applicable to such source, but only if the standards are promulgated in accordance with Section 306 within 120 days of their proposal.

(~~eeh~~h) "Notifiable Sanitary Sewer Overflow" means an overflow, spill, release or diversion of wastewater from a sanitary sewer system that:

1. reaches a surface water of the State; or
2. may imminently and substantially endanger human health based on potential for public exposure including but not limited to close proximity to public or private water supply wells or in areas where human contact would be likely to occur.

(~~eehii~~) "Operator" (for purposes of permit application) means the person who treats and discharges wastewater or in the absence of treatment the person who generates and/or discharges wastewater, sludge, or storm water.

(~~eejj~~) "Permit" means any issued permit under the NPDES.

(~~eejjk~~) "Permittee" a person to whom a permit has been issued under this rule.

(kkll) "Person" means any and all persons, natural or artificial, including, but not limited to, any individual, partnership, association, society, joint stock company, firm, company, corporation, institution, trust, other legal entity, business organization or any governmental entity and any successor, representative, responsible corporate officer, agent or agency of the foregoing.

(llmm) "Pollutant" includes but is not limited to dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal and agricultural waste discharged into water. It does not mean:

1. sewage from vessels or
2. water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil and gas production and disposed of in a well, if the well used either to facilitate production or for disposal purposes is approved by authority of the state and if the Department determines that the injection or disposal will not result in the degradation of ground or surface water resources.

(mmnn) "Pollutant Load Allocation" means a determination of allowable amount(s) of a specific pollutant that may be discharged to a water of the state by one or more dischargers without causing a water quality standard violation.

(nnoo) "Privately Owned Treatment Works" means any device or system which is used to treat wastes from any facility whose operator is not the operator of the treatment works, and which is not a "POTW."

(oopp) "Publicly Owned Treatment Works" or "(POTW)" means a wastewater collection and treatment facility owned by the state, a municipality, regional entity composed of two or more municipalities, or another entity created by state or local authority for the purpose of collecting and treating municipal wastewater.

(ppqq) "POTW Operator" (for purposes of permit application) means a person having all of the following powers, except where a POTW is operated by a contractor who is not required to have these powers:

1. Police and land use powers, including the power to grant, deny, or condition new sewer connections and to establish and enforce sewer use ordinances and
2. Power over the design, construction, operation, and maintenance of a treatment works, including the power to select and terminate operations personnel, finance facilities construction by capital expenditures, and enact and enforce user charge systems and taxes that generate revenue for operation and maintenance.

(qqrr) "Regional Administrator" means the Regional Administrator of the appropriate regional office of the Environmental Protection Agency or the authorized representative of the Regional Administrator.

(~~ff~~ss) "Schedule of Compliance" means a schedule of remedial measures, included in a permit, including an enforceable sequence of actions or operations leading to compliance with any permit requirement or water quality standard.

(~~sst~~t) "Severe Property Damage" means substantial physical damage to property, damage to waste treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(~~ttu~~u) "Sewage" means water carried human wastes from residences, buildings, industrial establishments or other places, together with such ground, surface, storm or other waters as may be present.

(~~ttt~~vv) "Sludge" means any solid, semi-solid, or viscous material or other residue resulting from treatment of wastewater or produced as a result of wastewater management.

(~~vv~~ww) "State Indirect Discharge Permit" or "SID Permit" means a permit issued to dischargers of non-domestic pollutants to a "POTW" or a "Privately Owned Treatment Works."

(~~xx~~) "Surface Coal Mine" means a surface mining operation, as defined in Rule 335-6-9-.03(k), used for the recovery of coal.

(~~www~~vv) "Territorial Seas" means the belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles.

(~~sxx~~zz) "Total Maximum Daily Load" or "TMDL" means the sum of the individual wasteload allocations for point sources and load allocations for non-point sources and natural background.

(~~yy~~aaa) "Toxic Pollutants" means pollutants and combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organisms, either directly from the environment or indirectly through food chains, will, on the basis of information available to the Department or Director cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring. This shall include but not be limited to pollutants listed as toxic under Section 307(a)(1) of the FWPCA.

(~~zz~~bbb) "Trade Secret" includes but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound or procedure, as well as production data or compilation of information, financial and marketing data, which is not patented, which is known only to certain individuals within a commercial concern who are using



it to fabricate, produce or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know of it.

(~~aa~~ccc) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(~~bb~~ddd) "Wasteload Allocation" or "WLA" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources of pollution.

(~~ee~~eee) "Waste Treatment Facility" shall mean any devices or systems used in the storage, treatment, recycling or reclamation of municipal sewage, industrial waste, any pollutant, or other waste, including but not limited to, interceptor sewers, outfall sewers, sewage collection systems; associated pumping power and other equipment and their appurtenances; extensions, improvements, remodeling, additions or alterations thereof. In addition, "waste treatment facility" shall mean any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, industrial waste, pollutant, or other waste which flows into waters of the state.

(~~dd~~fff) "Waters of the State" means all waters of any river, stream, watercourse, pond, lake, coastal, ground or surface water, wholly or partially within the state, natural or artificial. This does not include waters which are entirely confined and retained completely upon the property of a single individual, partnership or corporation unless such waters are used in interstate commerce.

(~~ee~~ggg) "Zone of Initial Dilution" or "ZID" means that area extending from the port openings of a high rate diffuser to the initial edge of the mixing zone where due to great turbulence a constant instream waste concentration (IWC) cannot be determined. For purposes of this definition a high rate diffuser is a submerged outfall in the form of a single pipe outlet or of multiport design giving rise to one or several submerged discharge jets designed to induce mixing between the effluent and receiving stream. The diffuser will protect against surface impingement and bottom attachment of the submerged jet(s) and in general a minimum exit velocity of ten feet per second shall be provided. The length of the ZID and thereby the distance to the initial edge of the mixing zone shall not exceed the more stringent of the following requirements:

1. fifty times the discharge length scale (DLS) in any spatial direction, where the DLS is the square root of the cross-sectional area of any discharge outlet,
2. five times the water depth in any horizontal direction from the discharge outlet, or

3. no more than ten percent of the distance from the edge of the outfall structure to the leading edge of the mixing zone in any spatial direction.

**Author:** John Poole, Ed Hughes, Glenda Dean, Chip Crockett.

**Statutory Authority:** Code of Alabama 1975, §§ 22-22-1 to 22-22-14 and §§ 22-22A-1 to 22-22A-16.

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