

**TRANSMITTAL SHEET FOR  
NOTICE OF INTENDED ACTION**

Control 335 Department or Agency Environmental Management  
Rule No. 335-6-8-17  
Rule Title: Class VI Well Financial Responsibility Requirements

X 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?          N/A

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

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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 required to be accompanied by a fiscal note prepared in accordance with subsection (f) of section 41-22-23, Code of Alabama 1975.

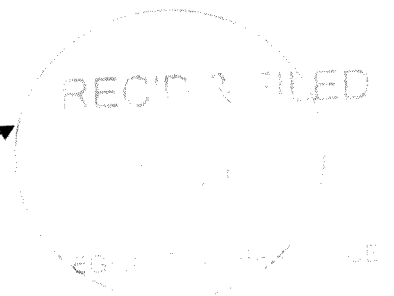
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Certification of Authorized Official

I certify that the attached proposed rule has been proposed in full 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 Marilyn Hot

Date May 20, 2011

Date Filed



APA-2  
11/96

**ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT  
WATER DIVISION**

**NOTICE OF INTENDED ACTION**

**AGENCY NAME:** Alabama Department of Environmental Management

<b>Rule NO.</b>	<b>Title</b>
335-6-8-.01	Purpose
335-6-8-.02	Definitions
335-6-8-.05	Prohibited Actions
335-6-8-.07	Permit Issuance Procedures
335-6-8-.08	Public Notice Requirements
335-6-8-.10	Class V Well Permit Application Requirements
335-6-8-.12	Class V Well Permit Requirements
335-6-8-.13	Class VI Well Applicability and General Requirements
335-6-8-.14	Class VI Well Permit Application and Application Review Requirements
335-6-8-.15	Class VI Well Minimum Criteria for Siting
335-6-8-.16	Class VI Well Area of Review and Area of Review Corrective Action
335-6-8-.17	Class VI Well Financial Responsibility Requirements
335-6-8-.18	Class VI Well Construction Requirements
335-6-8-.19	Class VI Well Logging, Sampling and Testing Requirements Prior to Injection Well Operation
335-6-8-.20	Class VI Well Operating Requirements
335-6-8-.21	Class VI Well Mechanical Integrity Requirements
335-6-8-.22	Class VI Well Testing and Monitoring Requirements
335-6-8-.23	Class VI Well Reporting Requirements
335-6-8-.24	Class VI Well Plugging Requirements
335-6-8-.25	Class VI Well Post-Injection Site Care and Site Closure Requirements
335-6-8-.26	Class VI Well Emergency and Remedial Response Requirements
335-6-8-.27	Class VI Well Permit Requirements
335-6-8-.28	Technical Submittals and Other Reports to the Department
335-6-8-.29	Coordination with EPA
335-6-8-.30	Confidentiality

**INTENDED ACTION:** Revise Division 6 of the ADEM Administrative Code with the addition or amendment of Rules 335-6-8-.01 (Purpose), 335-6-8-.02 (Definitions), 335-6-8-.05 (Prohibited Actions), 335-6-8-.07 (Permit Issuance Procedures), 335-6-8-.08

(Public Notice), 335-6-8-.10 (Class V Well Permit Application Requirements), 335-6-8-.12 (Permit Issuance Procedures), 335-6-8-.13 (Class VI Well Applicability and General Requirements), 335-6-8-.14 (Class VI Well Permit Application and Application Review Requirements), 335-6-8-.15 (Class VI Well Minimum Criteria for Siting), 335-6-8-.16 (Area of Review and Area of Review Corrective Action), 335-6-8-.17 (Class VI Well Financial Responsibility Requirements), 335-6-8-.18 (Class VI Well Construction Requirements), 335-6-8-.19 (Class VI Well Logging, Sampling and Testing Requirements Prior to Injection Well Operation), 335-6-8-.20 (Class VI Well Operating Requirements), 335-6-8-.21 (Class VI Well Mechanical Integrity Requirements), 335-6-8-.22 (Class VI Well Testing and Monitoring Requirements), 335-6-8-.23 (Class VI Well Reporting Requirements), 335-6-8-.24 (Class VI Well Plugging Plan), 335-6-8-.25 (Post-Injection Site Care and Site Closure Requirements), 335-6-8-.26 (Class VI Well Emergency and Remedial Response Requirements), 335-6-8-.27 (Class VI Well Permit Requirements), 335-6-8-.28 (Technical Submittals and Other Reports to the Department), 335-6-8-.29 (Coordination with EPA), and 335-6-8-.30 (Confidentiality).

**SUBSTANCE OF PROPOSED ACTION:**

Revisions to the Division 6 Code are being proposed to include requirements for Class VI injection wells, for geologic sequestration of carbon dioxide. The proposed additions and amendments are consistent with the federal regulations for Class VI wells published in the Federal Register on December 10, 2010.


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

Comments may be submitted in writing or orally at a public hearing to be held 1:00 p.m., July 11, 2011, in the ADEM Hearing Room, 1400 Coliseum Blvd., Montgomery, Alabama 36110.

**FINAL DATE FOR COMMENT AND COMPLETION OF NOTICE:** July 11, 2011

**CONTACT PERSON AT AGENCY:**

Sonja Massey (334) 271-7832

  
Lance R. LeFleur  
Director

**335-6-8-.17 Class VI Well Financial Responsibility Requirements.**

(1) The owner or operator must demonstrate and maintain financial responsibility as determined by the Department that meets the following conditions:

(a) The financial responsibility instrument(s) used must be from the following list of qualifying instruments:

1. Trust Funds.
2. Surety Bonds.
3. Letter of Credit.
4. Insurance.
5. Self Insurance (i.e., Financial Test and Corporate Guarantee).
6. Escrow Account.
7. Any other instrument(s) satisfactory to the Department.

(b) The qualifying instrument(s) must be sufficient to cover the cost of:

1. Corrective action (that meets the requirements of 335-6-8-.16;
2. Injection well plugging (that meets the requirements of 335-6-8-.24;
3. Post injection site care and site closure (that meets the requirements of 335-6-8-.25; and
4. Emergency and remedial responses (that meet the requirements of 335-6-8-.26.

(c) The financial responsibility instrument(s) must be sufficient to address endangerment of underground sources of drinking water.

(d) The qualifying financial responsibility instrument(s) must comprise protective conditions of coverage.

1. Protective conditions of coverage must include at a minimum cancellation, renewal, and continuation provisions, specifications on when the provider becomes liable following a notice of cancellation if there is a failure to renew with a new qualifying financial instrument, and requirements for the provider to meet a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

(i) Cancellation—for purposes of this part, an owner or operator must provide that their financial mechanism may not cancel, terminate, or fail to

renew except for failure to pay such financial instrument. If there is a failure to pay the financial instrument, the financial institution may elect to cancel, terminate, or fail to renew the instrument by sending notice by certified mail to the owner or operator and the Department. The cancellation must not be final for 120 days after receipt of cancellation notice. The owner or operator must provide an alternate financial responsibility demonstration within 60 days of notice of cancellation, and if an alternate financial responsibility demonstration is not acceptable (or possible), any funds from the instrument being cancelled must be released within 60 days of notification by the Department.

(ii) Renewal—for the purposes of this part, owners or operators must renew all financial instruments, if an instrument expires, for the entire term of the geologic sequestration project. The instrument may be automatically renewed as long as the owner or operator has the option of renewal at the face amount of the expiring instrument. The automatic renewal of the instrument must, at a minimum, provide the holder with the option of renewal at the face amount of the expiring financial instrument.

(iii) Cancellation, termination, or failure to renew may not occur and the financial instrument will remain in full force and effect in the event that on or before the date of expiration: The Department deems the facility abandoned; or the permit is terminated or revoked or a new permit is denied; or closure is ordered by the Department or a U.S. district court or other court of competent jurisdiction; or the owner or operator is named as debtor in a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U.S. Code; or the amount due is paid.

(e) The qualifying financial responsibility instrument(s) must be approved by the Department.

1. The Department shall consider and approve the financial responsibility demonstration for all phases of the geologic sequestration project prior to issuance of a Class VI permit 335-6-8-.14.

2. The owner or operator must provide any updated information related to their financial responsibility instrument(s) on an annual basis and if there are any changes, the Department must evaluate, within a reasonable time, the financial responsibility demonstration to confirm that the instrument(s) used remain adequate for use. The owner or operator must maintain financial responsibility requirements regardless of the status of the Department's review of the financial responsibility demonstration.

3. The Department may disapprove the use of a financial instrument if he determines that it is not sufficient to meet the requirements of this section.

(f) The owner or operator may demonstrate financial responsibility by using one or multiple qualifying financial instruments for specific phases of the geologic sequestration project.

1. In the event that the owner or operator combines more than one instrument for a specific geologic sequestration phase (e.g., well plugging), such combination must be limited to instruments that are not based on financial strength or performance (i.e., self insurance or performance bond), for example

trust funds, surety bonds guaranteeing payment into a trust fund, letters of credit, escrow account, and insurance. In this case, it is the combination of mechanisms, rather than the single mechanism, which must provide financial responsibility for an amount at least equal to the current cost estimate.

2. When using a third-party instrument to demonstrate financial responsibility, the owner or operator must provide a proof that the third-party providers either have passed financial strength requirements based on credit ratings; or has met a minimum rating, minimum capitalization, and ability to pass the bond rating when applicable.

3. An owner or operator using certain types of third-party instruments must establish a standby trust to enable the Department to be party to the financial responsibility agreement without the Department being the beneficiary of any funds. The standby trust fund must be used along with other financial responsibility instruments (e.g., surety bonds, letters of credit, or escrow accounts) to provide a location to place funds if needed.

4. An owner or operator may deposit money to an escrow account to cover financial responsibility requirements; this account must segregate funds sufficient to cover estimated costs for Class VI (geologic sequestration) financial responsibility from other accounts and uses.

5. An owner or operator or its guarantor may use self insurance to demonstrate financial responsibility for geologic sequestration projects. In order to satisfy this requirement the owner or operator must meet a Tangible Net Worth of an amount approved by the Department, have a Net working capital and tangible net worth each at least six times the sum of the current well plugging, post injection site care and site closure cost, have assets located in the United States amounting to at least 90 per cent of total assets or at least six times the sum of the current well plugging, post injection site care and site closure cost, and must submit a report of its bond rating and financial information annually. In addition, the owner or operator must either: Have a bond rating test of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A, or Baa as issued by Moody's; or meet all of the following five financial ratio thresholds: A ratio of total liabilities to net worth less than 2.0; a ratio of current assets to current liabilities greater than 1.5; a ratio of the sum of net income plus depreciation, depletion, and amortization to total liabilities greater than 0.1; A ratio of current assets minus current liabilities to total assets greater than -0.1; and a net profit (revenues minus expenses) greater than 0.

6. An owner or operator who is not able to meet corporate financial test criteria may arrange a corporate guarantee by demonstrating that its corporate parent meets the financial test requirements on its behalf. The parent's demonstration that it meets the financial test requirements is insufficient if it has not also guaranteed to fulfill the obligations for the owner or operator.

7. An owner or operator may obtain an insurance policy to cover the estimated costs of geologic sequestration activities requiring financial responsibility. This insurance policy must be obtained from a third-party provider.

(2) The requirement to maintain adequate financial responsibility and resources is directly enforceable regardless of whether the requirement is a condition of the permit.

(a) The owner or operator must maintain financial responsibility and resources until:

1. The Department receives and approves the completed post-injection site care and site closure plan; and

2. The Department approves site closure.

(b) The owner or operator may be released from a financial instrument in the following circumstances:

1. The owner or operator has completed the phase of the geologic sequestration project for which the financial instrument was required and has fulfilled all its financial obligations as determined by the Department, including obtaining financial responsibility for the next phase of the geologic sequestration project, if required: or

2. The owner or operator has submitted a replacement financial instrument and received written approval from the Department accepting the new financial instrument and releasing the owner or operator from the previous financial instrument.

(3) The owner or operator must have a detailed written estimate, in current dollars, of the cost of performing corrective action on wells in the area of review, plugging the injection well(s), post-injection site care and site closure, and emergency and remedial response.

(a) The cost estimate must be performed for each phase separately and must be based on the costs to the regulatory agency of hiring a third party to perform the required activities. A third party is a party who is not within the corporate structure of the owner or operator.

(b) During the active life of the geological sequestration project, the owner or operator must adjust the cost estimate for inflation within 60 days prior to the anniversary date of the establishment of the financial instrument(s) used to comply with paragraph (1) of this section and provide this adjustment to the Department. The owner or operator must also provide to the Department written updates of adjustments to the cost estimate within 60 days of any amendments to the area of review and corrective action plan (335-6-8-.16), the injection well plugging plan (335-6-8-.24), the post-injection site care and site closure plan (335-6-8-.25), and the emergency and remedial response plan (335-6-8-.26).

(c) The Department must approve any decrease or increase to the initial cost estimate. During the active life of the geologic sequestration project, the owner or operator must revise the cost estimate no later than 60 days after the Department has approved the request to modify the area of review and corrective action plan (335-6-8-.16), the injection well plugging plan (335-6-8-.24), the post-injection site care and site closure plan (335-6-8-.25), and the emergency and response plan 335-6-8-.26), if the change in the plan increases

the cost. If the change to the plans decreases the cost, any withdrawals of funds must be approved by the Department. Any decrease to the value of the financial assurance instrument must first be approved by the Department. The revised cost estimate must be adjusted for inflation as specified in paragraph (3)(b) of this section.

(d) Whenever the current cost estimate increases to an amount greater than the face amount of a financial instrument currently in use, the owner or operator, within 60 days after the increase, must either cause the face amount to be increased to an amount at least equal to the current cost estimate and submit evidence of such increase to the Department, or obtain other financial responsibility instruments to cover the increase. Whenever the current cost estimate decreases, the face amount of the financial assurance instrument may be reduced to the amount of the current cost estimate only after the owner or operator has received written approval from the Department.

(4) The owner or operator must notify the Department by certified mail of adverse financial conditions such as bankruptcy that may affect the ability to carry out injection well plugging and post-injection site care and site closure.

(a) In the event that the owner or operator or the third party provider of a financial responsibility instrument is going through bankruptcy, the owner or operator must notify the Department by certified mail of the commencement of a voluntary or involuntary proceeding under Title 11 (Bankruptcy), U. S. Code, naming the owner or operator as debtor, within 10 days after the commencement of the proceeding.

(b) A guarantor of a corporate guarantee must make such a notification to the Department if he/she is named as debtor, as required under the terms of the corporate guarantee.

(c) An owner or operator who fulfills the requirements of paragraph (1) of this section by obtaining a trust fund, surety bond, letter of credit, escrow account, or insurance policy will be deemed to be without the required financial assurance in the event of bankruptcy of the trustee or issuing institution, or a suspension or revocation of the authority of the trustee institution to act as trustee of the institution issuing the trust fund, surety bond, letter of credit, escrow account, or insurance policy. The owner or operator must establish other financial assurance within 60 days after such an event.

(5) The owner or operator must provide an adjustment of the cost estimate to the Department within 60 days of notification by the Department, if the Department determines during the annual evaluation of the qualifying financial responsibility instrument(s) that the most recent demonstration is no longer adequate to cover the cost of corrective action (as required by 335-6-8-.17), injection well plugging (as required by 335-6-8-.24), post-injection site care and site closure (as required by 335-6-8-.25), and emergency and remedial response (as required by 335-6-8-.26).

(6) The Department must approve the use and length of pay-in-periods for trust funds or escrow accounts.



**Author:** Sonja Massey.

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

**History:** XXXXXX, 2011.