

**335-6-6-.02 Definitions.** Wherever used in this chapter, 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 chapter, the following shall mean:

**[NOTE: Due to the chronology of the adoption of the following definitions, a definition may not appear in alphabetical order. Please review the entire list before concluding that a term is not defined.]**

(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" or "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 this 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.

(j) "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."

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

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

(t) "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."

(u) "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.

(v) "General Permit" means an NPDES Permit issued for a class of dischargers located in a defined area and meeting the requirements of rule 335-6-6-.23.

(w) "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.

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

(y) "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.

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

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

(bb) "Method Detection Limit" or "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 in accordance with the procedure in Appendix B of 40 CFR Part 136.

(cc) "Minimum Level" or "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.

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

(ee) "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.

(ff) "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.

(gg) "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.

(hh) "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.

(ii) "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.

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

(kk) "Permittee" a person to whom a permit has been issued under this chapter.

(ll) "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.

(mm) "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.

(nn) "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.

(oo) "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."

(pp) "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.

(qq) "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.

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

(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.

(tt) "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.

(uu) "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.

(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.

(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 paragraph 335-6-9-.02(k), used for the recovery of coal.

(yy) "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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(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.

(hhh) Pesticide discharges to waters of the State from pesticide application means the discharges that result from the application of biological pesticides, and the application of chemical pesticides that leave a residue, from point sources to waters of the State. In the context of this definition of pesticide discharges to waters of the State from pesticide application, this does not include agricultural storm water discharges and return flows from irrigated agriculture, which are excluded by paragraphs 335-6-6-.03(1)(d) and (e).

(iii) Pesticide residue for the purpose of determining whether an NPDES permit is needed for discharges to waters of the State from pesticide application, means that portion of a pesticide application that is discharged from a point source to waters of the State and no longer provides pesticidal benefits. It also includes any degradates of the pesticide.

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**335-6-6-.08 Application Format and Procedures for New Permits and for Permit Reissuance.**

(1) Applications ~~shall be made in duplicate~~, shall be made using forms designated by the Director, and shall consist of the following:

(a) Information required under 40 CFR Part 122 Subpart B (~~2000~~2019) and 40 CFR 125 (2005) where applicable to the particular discharges;

(b) Trade name and chemical composition of all biocides and corrosion inhibitors used;

(c) Type of business entity, whether corporation, general or limited partnership, sole proprietorship or other;

(d) If applicable, name of applicant's parent corporation or subsidiary corporations;

(e) If a corporation, location of incorporation;

(f) A listing of corporate officers and their names and addresses; and the name and address of the agent designated by the corporation for purposes of service. If a partnership, the names and addresses of the general partners and, if a proprietorship, the name and address of the proprietor;

(g) Permit numbers for applicant's previously issued NPDES permits and identification of any other state environmental permits presently held by the applicant or its parent corporation or subsidiary corporations within the state;

(h) Identification of administrative complaints, notices of violation, directives, or administrative orders, or litigation concerning water pollution, if any, against the applicant, its parent corporation or subsidiary corporations within the state;

(i) If the discharge is to be from a new processing facility or new waste treatment facility, the Department may require the submittal of a preliminary engineering report and/or preliminary plans and specifications prior to permitting or the Department may elect to require one or more of these documents prior to discharge or the Department may waive the requirement for one or all of these documents. This requirement applies whether or not an existing facility is present at the same location which may possess an NPDES permit, but does not apply to mining operations regulated pursuant to the Alabama Surface Mining Control and Reclamation Act of 1981; and

(j) A best management practices (BMP) plan if required by the Director prior to permitting. BMP plans shall be developed in accordance with good engineering practices and may be required to:

1. Be documented in narrative form and shall include any necessary plot plans, drawings or maps;

2. Examine each facility component or system with respect to its potential for causing a release of significant amounts of pollutants into waters due to equipment failure, improper operation, natural phenomena such as rain, freezing temperatures, etc.;

3. Include a prediction of the direction, rate of flow and total quantity of pollutants which could be discharged from the facility as a result of equipment failure, natural phenomena or other circumstances;

4. Establish best management practices addressing each system capable of causing a release of significant amounts of pollutants into waters of the state;

5. Reflect applicable requirements for Spill Prevention Control and Countermeasure (SPCC) plans under Section 311 of the FWPCA and 40 CFR Part 112 (1994), and may incorporate such plans into the BMP plan by reference;

6. Assure the proper management of solid and hazardous waste;

7. Address the following points for materials storage areas, process and material handling areas, loading and unloading areas, plant site runoff, and sludge and waste disposal areas: statement of policy, employee training, inspections, preventative maintenance, and housekeeping; and

8. Provide impervious liners, dikes, or other structures sufficient to prevent the discharge of a pollutant to groundwater.

(k) The Department may require that an application for an NPDES permit provide additional reports, specifications, plans, quantitative data, bioassays, stream models, or other information reasonably required to assess the discharges of the facility and the potential water quality impact of the discharges and to determine whether to issue an NPDES permit; and

1. Applicable fees as required by chapter 335-1-6.

2. Signatory requirements for permit applications shall comply with the requirements of rule 335-6-6-.09.

3. Applicants shall keep records of all data used to complete permit applications and any supplemental information submitted under this chapter for a period of at least three years from the date the application is signed or if the applicant is involved in litigation with the Department until such time that the litigation is resolved.

4. Any application which is incomplete or otherwise deficient shall not be processed until such time as the applicant has supplied the missing information or otherwise corrected the deficiency and shall not constitute compliance with rule 335-6-6-.12 or rule 335-6-6-.06, except that information requested under the authority of subparagraph 335-6-6-.08(1)(k) above after submittal of the initial application shall not render the initial application

incomplete unless such information was requested at least 180 days prior to the expiration of an existing permit.

5. Permit applications shall be submitted by the operator of the wastewater treatment and disposal system or, in instances where wastewater is discharged without treatment, by the operator of the process or facility generating the wastewater. Permit applications for storm water discharge permits from municipalities and other governmental agencies shall be submitted by the person owning or having control over the storm sewer system.

6. Permit applications submitted for publicly owned treatment works, that have design effluent flows equal to or greater than one million gallons per day or that receive a discharge from a significant industrial discharger, shall include the results of a valid whole effluent biological toxicity test, performed within the twelve month period immediately preceding the application submittal date.

7. The permit writer shall determine if a permit application is complete as defined by this rule and if all the information necessary for determining permit conditions has been submitted. If additional information is required, the permit writer shall request the information from the applicant in writing and failure to respond by the applicant shall be grounds for denial of the permit application.

8. Applications for new sources, new dischargers, permit reissuance and for permit modifications [except as in subparagraph 335-6-6-.08(k)9.] shall be submitted at least 180 days prior to the applicant's desired date for commencement of the new discharge and for permit reissuance at least 180 days prior to expiration of the current permit.

9. Applications for individual NPDES permits for storm water discharge shall contain the information required by 40 CFR 122 (2000) and shall be submitted in accordance with the requirements of 40 CFR 122 (2000).

(l) Except as specified in subparagraph 335-6-6-.08(1)(l)2. or 3., quantitative data provided in a permit application shall be collected in accordance with sufficiently sensitive analytical methods approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N.

1. For the purposes of this requirement, a method approved under 40 CFR Part 136 or required under 40 CFR chapter I, subchapter N is "sufficiently sensitive" when:

(i) The method minimum level (ML) is at or below the level of the applicable water quality criterion for the measured pollutant or pollutant parameter; or

(ii) The method minimum ML is above the applicable water quality criterion, but the amount of the pollutant or pollutant parameter in a facility's discharge is high enough that the method detects and quantifies the level of the pollutant or pollutant parameter in the discharge; or

(iii) 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.

2. When there is no analytical method that has been approved under 40 CFR Part 136, required under 40 CFR chapter I, subchapter N or O, and is not otherwise required by the Director, the applicant may use any suitable method but shall provide a description of the method. When selecting a suitable method, other factors such as a method's precision, accuracy, or resolution may be considered when assessing the performance of the method.

3. Consistent with 40 CFR Part 136, applicants have the option of providing matrix or sample specific minimum levels rather than the published levels. Further, where an applicant 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 applicant shall select a different method from the remaining EPA-approved methods that is sufficiently sensitive consistent with subparagraph 335-6-6-.08(1)(l)1. Where no other EPA-approved methods exist, the applicant should select a method consistent with subparagraph 335-6-6-.08(1)(l)2.

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**335-6-6-.21 Public Notice Requirements.**

(1) Actions Requiring Public Notice. The Director shall give public notice that the following actions have occurred:

(a) An NPDES Permit application has been received and a draft NPDES permit or draft modification to an NPDES permit has been prepared and a tentative determination made to issue or reissue the permit or modification;

(b) An NPDES Permit application has been received and a tentative determination to deny a permit application has been made;

(c) A tentative determination has been made to revoke and reissue an NPDES;

(d) A tentative determination has been made to terminate an NPDES permit (except that if the determination results from the permanent termination of the flow or by connection to the POTW, the Director may terminate the permit by providing 30-day notice to the permittee); or

(e) A public hearing has been scheduled.

(2) Duration of Public Notice Periods.

(a) Public notice of the receipt of an application and the preparation of a draft permit or draft modification to a permit, including a notice of intent to deny a permit application or termination of a permit shall allow at least 30 days for public comment.

(b) Public notice of a public hearing shall be given at least 30 days before the hearing. Public notice of the hearing may be given at the same time as public notice of the application and draft permit and the two notices may be combined.

(3) Methods of Public Notice. Public notice of activities described in paragraph 335-6-6-.21(1) above shall be given by the methods listed below:

(a) By mailing a copy of a notice to the persons listed below. Any person otherwise entitled to receive notice under this paragraph may waive his or her rights to receive notice for any classes and categories of permits:

1. The permit applicant.

2. Any other agency which the Director knows has issued or is required to issue a RCRA, UIC, PSD, NPDES or 404 permit for the same facility or activity.

3. Federal and state agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, State Historic Preservation Officers, and other appropriate government authorities, including any affected states.

4. Any state agency responsible for plan development under the FWPCA Section 208(b)(2), 208(b)(4) or 303(e) and the U.S. Army Corps of Engineers, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service.

5. Any indirect discharger identified in the permit application of a publicly or privately owned treatment works.

6. Persons on a mailing list developed by:

(i) Including those who request in writing to be on the list;

(ii) Notifying the public of the opportunity to be put on the mailing list through periodic publication in the public press and in such publications as regional and state funded newsletters, environmental bulletins, or state law journals (the Director may update the mailing list from time to time by requesting written indication of continued interest from those listed and may delete from the list the name of any person who fails to respond to such a request);

7. To any unit of local government having jurisdiction over the area where the facility is or is proposed to be located.

8. To each state agency having any authority under state law with respect to the construction or operation of such facility.

(b) By publication of a notice ~~in a daily or weekly newspaper of general circulation within the area affected by the facility or activity~~ to the Department's website. The draft permit and fact sheet, if applicable, shall be posted on the website for the duration of the public comment period.

(4) Content of Public Notices.

(a) All public notices issued under this rule shall contain the following minimum information:

1. Name and address of the office processing the permit action for which notice is being given;

2. Name and address of the permittee or permit applicant and, if different, of the facility or activity regulated by the permit (when an address is not applicable to the regulated entity a general location shall be given);

3. Name, address and telephone number of a person from whom interested persons may obtain further information, including copies of the draft permit, statement of basis or fact sheet, and the application;

4. A general description of the public comment procedures required by rule 335-6-6-.21 and the time and place of any hearing that will be held, (if applicable) including a statement of procedures to request

a hearing, unless a hearing has already been scheduled, and other procedures by which the public may participate in the final permit decision;

5. A general description of the location of each existing or proposed discharge point and the name of the receiving water; and

6. A general description of the activity or business conducted at the facility generating the wastewater.

(b) Public Notices for Hearings. In addition to the general public notice requirements, the public notice of a hearing shall contain the following information:

1. A reference to the date of previous public notices relating to the permit;

2. Date, time, and place of the hearing; and

3. A description of the nature and purpose of the hearing, including a citation of the applicable rules and procedures.

(5) Public Comments and Requests for Public Hearings. During the public comment period, any interested person may submit written comments on the permit application and draft permit and may request a public hearing, if no hearing has already been scheduled. A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing. All comments shall be considered in making the final decision and shall be answered as provided in paragraph 335-6-6-.21(7).

(6) Public Hearings.

(a) The Director shall hold a public hearing whenever it is found, on the basis of hearing requests, that there exists a significant degree of public interest in a permit application or a draft permit.

(b) The Director may also hold a public hearing at his or her discretion whenever such a hearing might clarify one or more issues involved in the permit decision;

(c) Any person may submit oral or written statements and data concerning the permit application or the draft permit. Reasonable limits may be set upon the time allowed for oral statement, and the submission of statements in writing may be required. The public comment period shall automatically be extended to the close of any public hearing under this rule. The hearing officer may also extend the comment period by so stating at the hearing.

(d) A tape recording or written transcript of the hearing shall be made available to the public.

(7) Response to Comments. At the time that any final permit decision is issued, the Department shall prepare a response to comments which shall be made available to the public. This response shall:

(a) Specify which provisions, if any, of the draft permit have been changed by the final permit decision, and the reasons for the change and

(b) Describe and respond to all significant comments (like comments may be grouped and one response written), concerning the draft permit, raised during the public comment period or during any hearing. A significant comment is a comment that offers information or suggestions of a technical, environmental, legal, or regulatory nature that are applicable to the proposed permit.

(8) Comments from Governmental Agencies.

(a) If during the comment period for an NPDES draft permit, the District Engineer of the U.S. Army Corps of Engineers advises the Director in writing that anchorage and navigation of any of the waters of the United States would be substantially impaired by the granting of a permit, the permit shall be denied and the applicant so notified. If the District Engineer advises the Director that imposing specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation, then the Director shall include the specified conditions in the permit. Review or appeal of a permit denial or of conditions specified by the District Engineer shall be made through the applicable procedures of the Corps of Engineers, those conditions shall be considered stayed in the NPDES permit for the duration of that appeal or review.

(b) If during the comment period the U.S. Fish and Wildlife Service, the National Marine Fisheries Service, or any other state or federal agency with jurisdiction over fish, wildlife, or public health advised the Director in writing that the imposition of specified conditions upon the permit is necessary to avoid substantial impairment of fish, shellfish, a public water supply, or wildlife resources, the Director may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the FWPCA.

(c) In appropriate cases the Director may consult with one or more of the agencies referred to in this rule before issuing a draft permit and may reflect their views in the statement of basis, the fact sheet, or the draft permit.

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

**History:** October 19, 1979. **Amended:** January 24, 1989; **Amended:** April 29, 1991; **Amended:** August 1, 2002; **Amended:** September 29, 2015; **Amended:** Proposed April 19, 2019.