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Application Restrictions Statutes & Regulations

Alabama

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Application Restrictions

STATE OF ALABAMA

1) Code of Ala. §§ 22-22-1 et seq.; Code of Ala. §§ 22-22A-1—16; Ala. Admin. Code r. 335-6-7-.26

2) Ala. Admin. Code r. 335-6-20-.14

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Alabama Legislative Services Agency.

1) Code of Ala. §§ 22-22-1 et seq.; Code of Ala. §§ 22-22A-1—16; Ala. Admin. Code r. 335-6-7-.26

§ 22-22-1. Title – Definitions.

(a) This chapter may be cited as the “Alabama Water Pollution Control Act.”

(b) For the purposes of this chapter, unless otherwise indicated, the following terms shall have the meanings respectively ascribed to them by this section:

(1) Commission. — The Alabama Department of Environmental Management.

(2) Waters. — 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.

(3) Pollution. — The discharge of a pollutant or combination of pollutants. A 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. Pollutant does not mean (a) sewage from vessels; or (b) 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 or 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 commission determines that such injection or disposal will not result in the degradation of ground or surface water resources.

(4) Sewage. — 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.

(5) Industrial wastes. — Liquid or other wastes resulting from any process of industry, manufacture, trade or business or from the development of natural resources.

(6) Other wastes. — All other substances, whether liquid, gaseous, or solid, or energy in the form of heat from all other sources including, but not limited to, any vessels or other conveyances traveling or using the waters of this state, except industrial wastes or sewage.

(7) Person. — 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.

(8) Discharge. — The addition, introduction, leaking, spilling or emitting of any sewage, industrial waste, pollutant or other wastes into waters of the state.

(9) Director. — The director of the Alabama Department of Environmental Management.

(10) Chairman. — The director of the Alabama Department of Environmental Management.

(11) Vice-chairman. — The director of the Alabama Department of Environmental Management.

(12) Water improvement commission. — The Alabama Department of Environmental Management.

(13) Alabama water improvement commission. — The Alabama Department of Environmental Management.

§ 22-22-2. Purpose.

Whereas the pollution of the waters of this state constitutes a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, it is hereby declared to be the public policy of this state and the purpose of this chapter to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life and for domestic, agricultural, industrial, recreational and other legitimate beneficial

uses; to provide for the prevention, abatement and control of new or existing water pollution; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

§§ 22-22-3 — 22-22-6. [Repealed.]

§ 22-22-7. Advisory committee; generally.

(a) In order to make available to the commission the services of an advisory body on such technical matters as the commission shall require, there is hereby created the Technical Advisory Committee to the commission which shall consist of the Commissioner of Agriculture and Industries, the Commissioner of Conservation and Natural Resources, the Director of the Alabama Development Office and the State Geologist, each of whom shall be members of said advisory committee throughout his respective term and until the appointment of his successor. The Technical Advisory Committee shall meet on call of the chairman of the commission and shall advise the chairman and the commission on any technical matters referred to it by the chairman of the commission. From time to time, as circumstances may require, a member of the Technical Advisory Committee may designate a representative of his department or agency to perform the duties of the member making the designation. Such person, if any, designated pursuant to this subsection, shall have the powers and be subject to the duties and responsibilities of the officer appointing him. The staffs and departments or the members of the Technical Advisory Committees supporting them in their official capacity are hereby authorized and directed to render whatever assistance is necessary to further the duties of said advisory committee or to accomplish the purposes of this chapter.

(b) The commission is authorized to provide for the establishment of other advisory committees, appointment of the membership of such committees, scope of investigation and other duties of such committees. The period of duration of such committees and the terms of members of such committees shall be established by the commission. No salary or compensation shall be allowed any member of such committees for services thereon. Travel, subsistence, and other expenses incurred by members of such committees in the discharge of their official duties as members of such committees, and when approved by the chairman or the director by direction of the commission, shall be paid at the rate allowed other state employees as provided by Article 2 of Chapter 7 of Title 36 of this Code from any funds which are, or may become, available for the purpose of this chapter.

§ 22-22-8. [Repealed.]

§ 22-22-9. Advisory commission; powers and duties.

(a) It shall be the duty of the commission to control pollution in the waters of the state, and it shall specifically have the following powers:

(1) To study and investigate all problems concerned with the improvement and conservation of the waters of the state;

(2) To conduct, independently and in cooperation with others, studies, investigation and research and to prepare, or in cooperation with others prepare, a program or programs, any or all of which shall pertain to the purity and conservation of the waters of the state or to the treatment and disposal of pollutants or other wastes, which studies, investigations, research and program or programs shall be intended to result in the reduction of pollution of the waters of the state according to the conditions and particular circumstances existing in the various communities throughout the state; and

(3) To propose remedial measures insofar as practical means are available for abatement of such pollution.

To this end, the commission may cooperate with any public agency, including federal agencies, or with any private agency in the conduct of such experiments, investigations and research and may receive, on behalf of the state, any moneys which any such agency may contribute as its share of the cost under any such cooperative arrangement; provided, that such moneys shall be used only for the purposes for which they are contributed and any unexpended balance remaining after the conclusion of the experiments, investigation and research, or other uses for which such moneys were granted or donated, shall remain to the credit of the Water Improvement Commission Fund, unless the terms of such grant, gift or donation specifically require the return of any unexpended balance.

(b) It shall be the duty of the commission to conduct surveys with respect to the pollution of any waters of the state, either navigable or not navigable, to establish criteria standards and limitations for recognized limits of pollution and, independently or in cooperation with other agencies, both public and private, to promote, through education and demonstration, water conservation and the abatement of water pollution.

(c) The commission may require any person discharging, or applying to discharge, pollution into the waters of the state to establish and maintain such records, make such reports, install, use and maintain such monitoring equipment or methods, sample pollution, in accordance with such methods, at such locations, intervals and procedures as the commission shall prescribe and provide such other information as the commission reasonably may require. Any records, reports or information obtained under this chapter shall be available to the public; except, that upon a showing satisfactory to the commission by any person that records, reports or information, or a particular part thereof, other than effluent data to which the commission has access under this chapter, if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, the commission shall consider such record, report or information, or particular portion thereof, confidential in the administration of this chapter. Nothing in this subsection shall be construed to prevent disclosure of such report, record or information to federal or state representatives as necessary for purposes of administration of any federal or state water quality control laws or when relevant in any proceeding under this chapter. Any member of the commission

or its employees or agents, without advance notice and upon presentation of appropriate credentials, may enter any property or any industrial or other establishment at any reasonable time for the purpose of collecting such information, and no owner or official in charge shall refuse to admit such member, employee or agent for any purposes necessary to the discharge of his official duty. Any records, reports or information obtained by any member, employee or agent of the commission from any person shall be subject to the provisions of this subsection concerning confidentiality.

(d) It shall be the further duty of the commission to extend its cooperation and to advise industries and municipalities relative to the control of waste and other deleterious matter of pollutive nature and to make available to industries and municipalities the benefits of its studies and findings.

(e) It shall be the duty of the commission to exercise general supervision over the administration and enforcement of all laws relating to pollution of the waters of the state. Whenever the commission determines that any person is violating, or is about to violate, any of the provisions of this chapter, or any rule or regulation or order or permit of the commission promulgated thereunder, the commission may notify such person of such determination of the commission. The notice may be served by registered or certified mail or by an officer empowered to serve process under existing laws or by an officer or agent of the commission. Within such time as may be specified in such notice, such person shall file with the commission a full report showing steps that have been taken and are being taken to control such discharge or pollution. Thereupon, the commission may make such orders as in its opinion are deemed reasonable.

(f) It shall be the duty of the commission, after notice as provided in this subsection and after consideration of the purpose of this chapter, to establish such standards of quality for any waters in relation to their reasonable and necessary use as shall be in the public interest, recognizing that, because of variable factors and varied use of waters, no single standard of treatment and no single standard of quality are practical and that the degree of treatment of pollutants and other wastes must take into account the present and future uses, and such general policies relating to existing or proposed future pollution as it shall deem necessary to accomplish the purposes of this chapter and to modify, amend or cancel the same. Any provision of law to the contrary notwithstanding, the quality of pollution existing in an effluent at any time shall be subject to the control of the commission if it creates a health hazard. Prior to establishing standards as provided in this subsection, the commission shall cause to be published in a newspaper of general circulation in each county within which any such waters, wholly or partially, are located, a notice in substantially the following form:

NOTICE OF WATER IMPROVEMENT COMMISSION

Notice is hereby given that a hearing before the Water Improvement Commission of the State of Alabama will be held on the day of, _____ 19 _____, at _____ for the purpose of establishing standards of quality in those certain waters in the county or counties of

_____, Alabama, described as follows (Describe Waters) _____ Anyone desiring to be heard may appear at said meeting.

Water Improvement Commission
By: _____
Director

Such notice shall be published at least 45 days prior to the holding of any hearing of the commission for consideration of such standards; provided, that in any county where no such newspaper is available for publishing said notice, the prescribed notice shall be posted at the county courthouse of said county at least 45 days prior to holding of any such hearing of the commission. Any hearing required by this subsection may be conducted by a hearing officer appointed by the commission.

(g) It shall be the duty of the commission to receive and examine applications, plans, specifications and other data and to issue permits for the discharge of pollutants, industrial wastes entering directly or through a municipal or private treatment facility and other wastes into the waters of the state, stipulating in each permit the conditions under which such discharge may be permitted.

(h) It shall be the duty of the commission, and it shall have the authority, to adopt rules and regulations to carry out the provisions of this chapter and to accomplish the purpose of this chapter.

(i)

(1) It shall be the duty of the commission to issue, modify or revoke orders:

a. Prohibiting or abating discharges of pollutants or other wastes directly or indirectly, into the waters of the state; and

b. Requiring the construction of new treatment or disposal systems, or any parts thereof, or the modification, extension or alteration of existing treatment or disposal systems, or any parts thereof or the adoption of other remedial measures to prevent, control or abate pollution.

(2) It shall be the duty of the commission to issue, continue in effect, revoke, modify or deny, under such conditions as it may prescribe, to prevent, control or abate pollution, permits for the discharge of pollutants or other wastes into the waters of the state and for the installation, modification or operation of treatment or disposal systems or any parts thereof.

(3) Every person, prior to discharging any new or increased pollution into any waters of this state, shall apply to the commission in writing for a permit and must obtain such permit before discharging such pollution.

(4) Any and all pollution is hereby declared to be a public nuisance and, if it creates, or is about to create, a health hazard, shall be subject to immediate control of the commission by order or injunction. Any order issued under this subsection shall be deemed to be final and conclusive for the purposes of this chapter.

(j) The commission may enter into agreement with the responsible authorities of the federal government and of other states, subject to the approval of the Governor, relative to policies, methods, means and procedures to be employed to control pollution of any interstate waters and to carry out such agreements by procedures provided for in this chapter. This power shall not be deemed to extend to the modification of any agreement with any other state concluded by direct legislative act, but, unless otherwise expressly provided, the commission shall be the agency for the administration and enforcement of any such legislative agreement.

(k) Whenever the commission has cause to believe that any person is violating any permit, order or rule or regulation promulgated by the commission, the commission shall cause a prompt investigation to be made in connection therewith. If, upon inspection, the commission discovers a condition which is in violation of the provisions of this chapter, or any permit, order or rule or regulation promulgated pursuant thereto, it shall be authorized to order such violation to cease and to take such steps necessary to enforce such an order. The said order shall state the items which are in violation and shall provide a reasonable specified time within which the violation must cease. The person responsible shall make the corrections necessary to comply with the requirements of this chapter, permit, order or rule or regulation promulgated pursuant thereto, within the time specified in the order. Nothing in this subsection shall be deemed to prevent the commission or the Attorney General from prosecuting any violation of this chapter, or any permit, order or rule or regulation promulgated pursuant thereto, notwithstanding that such violation is corrected in accordance with any order.

(l) Any duly designated employee of the commission may administer oaths to witnesses and may conduct hearings or investigations, and any such duly designated employee of the commission may sign and issue subpoenas requiring persons to appear before him or the commission to give testimony and requiring the production of any papers, books, accounts, payrolls, documents or records, and the commission, through its designated officers, shall have the power to serve said subpoenas upon any such person by sending a copy of such subpoena through the United States mail, postage prepaid, which said mail shall be registered or certified with return receipt attached, and such service shall be complete when said registered or certified mail shall be delivered to said person and such receipt returned to the commission, or its designated employee, signed by the person sought to be subpoenaed. Obedience to a subpoena issued by the commission or any person authorized and designated by the commission to issue said subpoena may be enforced by application to any judge of the circuit court of the county in which said subpoena was issued or to the judge of any circuit court in which such person subpoenaed resides in the same manner as is provided by law for the grand jury of a county to enforce its subpoenas and with the same penalty as provided therefor for the failure of any person failing or refusing to comply with such subpoena.

(m) The commission, the Attorney General or any district attorney may commence a civil action for damages for pollution of the waters of the state including, but not limited to, any reasonable costs to prevent, minimize or clean up any damage resulting from pollution resulting from the wrongful act, omission or negligence of a person. Such civil actions may be filed in the name of the state by the commission or the Attorney General in the county or counties where pollution occurs or in which the defendant resides or does business. Both punitive and compensatory damages may be recovered in a case where pollution resulted from willful or wanton conduct on the part of the defendant; compensatory damages alone may be awarded when the pollution is caused by a negligent act or omission. Should a verdict for damages be obtained in any such action, the court shall also assess and tax as costs against the defendant all reasonable costs incurred by the particular department or agency which investigated the pollution in such action. Such costs, as testified to by sworn affidavit, shall be paid over by the court to that department or agency which performed the investigation.

(n) Any person who violates any of the provisions of, or fails to perform any duty imposed by, this chapter, or any permit or regulation issued under this chapter, or who violates any order or determination of the commission promulgated pursuant to this chapter and causes the death of fish or other wildlife shall, in addition to the penalties and remedies provided in subdivision (18) of Section 22-22A-5 and subsection (m) of this section, be liable to pay to the state an additional amount equal to the sum of money reasonably necessary to restock such waters or replenish such wildlife, as determined by the commission after consultation with the Game and Fish Division or the Marine Resources Division of the Department of Conservation and Natural Resources or any other governmental agency. Such sums as may thus be recovered, including punitive damages, if any, shall be credited, regardless of who instituted such action, to the game and fish and/or seafood fund as the Commissioner of Conservation and Natural Resources may determine. If the pollution has caused damage to fish and/or other wildlife in excess of \$5,000.00, as determined by the Alabama Department of Conservation and Natural Resources or any other governmental agency, and testified to by sworn affidavit, the damage shall be presumed to have been the direct and proximate result of negligence of the person shown to be responsible for such pollution, and the burden shall then be upon such person to prove freedom of negligence in causing the pollution in such cases.

(o) Nothing contained or authorized in this chapter and no civil action by the commission, or the Attorney General or any district attorney, as provided for in this section, shall be construed to impair, or abridge or abrogate any cause of action which any person or class of persons may have by any other statutory or case law for the alleviation, abatement, control or prevention of pollution or for the restitution for damages resulting therefrom. Nor shall any provision of this chapter be construed so as to create a new cause or causes of action with reference to this subsection.

§ 22-22-10. [Repealed.]

§ 22-22-11. Funds disbursement.

Funds which are or may become available from any source, appropriations or otherwise, to accomplish the purposes of this chapter, shall be disbursed by the commission or by its director in accordance with rules prescribed by the commission.

§ 22-22-12. [Repealed.]

§ 22-22-13. Construction of chapter.

This chapter is intended to supplement existing law, and no part of this chapter shall be construed to repeal any existing laws specifically enacted for the protection of health or the control of radiation. All remedies for the prevention and abatement of water pollution given to the Attorney General through the authority of this chapter are merely cumulative. Nothing in this chapter shall be interpreted as negating or destroying any common law or statutory right, duty, power or authority of the Attorney General of Alabama.

§ 22-22-14. Violations.

(a) Any person who willfully or with gross negligence violates any provision of the chapter, or rule, regulation or standard adopted under this chapter, or any condition or limitation in a permit issued under this chapter shall be punished by a fine of not less than \$2,500.00 nor more than \$25,000.00 per day of violation or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not less than \$5,000.00 nor more than \$50,000.00 per day of violation or by imprisonment for not less than one year and one day nor more than two years, or by both.

(b) Any person who knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed, or required to be maintained, under this chapter or who falsifies, tampers with or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter shall, upon conviction, be punished by a fine of not more than \$10,000.00 or by imprisonment for not more than six months, or by both.

§ 22-22A-1. Title.

This chapter shall be known and may be cited as “the Alabama Environmental Management Act.”

§ 22-22A-2. Legislative intent.

The Legislature finds the resources of the state must be managed in a manner compatible with the environment, and the health and welfare of the citizens of the state. To respond to the needs of its environment and citizens, the state must have a comprehensive and coordinated program of environmental management. It is therefore the intent of the

Legislature to improve the ability of the state to respond in an efficient, comprehensive and coordinated manner to environmental problems, and thereby assure for all citizens of the state a safe, healthful and productive environment.

(1) To this end an Alabama Department of Environmental Management is created by this chapter within the Executive Branch of State Government in order to effect the grouping of state agencies which have primary responsibility for administering environmental legislation into one department, to promote economy and efficiency in the operation and management of environmental programs, to eliminate overlapping or duplication of effort within the environmental programs of the state, to provide for timely resolution of permitting actions, to improve services to the citizens of the state, to protect human health and safety, to develop and provide for a unified environmental regulatory and permit system, to provide that the responsibility within the Executive Branch for the implementation of environmental programs and policies is clearly fixed and ascertainable, and to insure that government is responsive to the needs of the people and sufficiently flexible to meet changing conditions.

(2) It is also declared to be the intent of the Legislature to retain for the state, within the constraints of appropriate federal law, the control over its air, land and water resources and to secure cooperation between agencies of the state, agencies of other states, interstate agencies and the federal government in carrying out these objectives.

(3) It is the intent of the Legislature to recognize the unique characteristics of the Alabama coastal region and to provide for its protection and enhancement through a continued coastal area program.

(4) It is not the intent of the Legislature to abrogate any of the powers or duties of the State Board of Health which are found in Sections 22-2-1 through 22-2-14.

§ 22-22A-3. Definitions.

For the purposes of this chapter, the following words and phrases, unless a different meaning is plainly required by the context or by legislation governing functions transferred by this chapter, shall have the following meanings:

(1) Department. — The Alabama Department of Environmental Management, established by this chapter.

(2) Director. — The director of the Alabama Department of Environmental Management.

(3) Division. — A subdivision of the Alabama Department of Environmental Management, which may be headed by a division chief. Such divisions may be divided into sections where appropriate.

(4) Environmental Management Commission. — The Environmental Management Commission of the Alabama Department of Environmental Management.

(5) Function(s). — A duty, power or program exercised by or assigned to a commission, board or the State Health Department, including all positions and personnel relating to the performance of such function, unless otherwise provided by this chapter.

(6) Hearing officer. — An attorney licensed to practice law in the State of Alabama, designated by the Environmental Management Commission to hear appeals for the Environmental Management Commission and to make findings of fact, conclusions of law and recommendations to the Environmental Management Commission for its final decision.

(7) Person. — 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, estate, or other legal entity or other business organization or any governmental entity, and any successor, representative, agent or agency of the foregoing.

(8) Administrative action(s). — The issuance, modification, repeal or denial of any permit, license, certification, or variance, or the issuance, modification or repeal of any order, notice of violation, citation, rule or regulation by the department.

(9) All definitions of the Alabama Water Pollution Control Act, Section 22-22-1, shall be the definitions of the department for its Water Pollution Control Program.

(10) All definitions found in Section 22-23-31, relating to safe drinking water, shall be the definitions of the department for its Safe Drinking Water Program.

(11) All definitions of the Alabama Air Pollution Control Act, Section 22-28-2, shall be the definitions of the department for its Air Pollution Control Program.

(12) All definitions found in Section 22-24-1, relating to water well standards, shall be the definitions of the department for its Water Well Standards Program.

(13) All definitions found in Section 22-25-1, relating to water and wastewater systems and treatment plants, shall be the definitions of the department for its Water and Wastewater Systems and Treatment Plant Operator Program.

(14) All definitions found in Section 22-27-2, relating to solid wastes, shall be the definitions of the department for its Solid Waste Program.

(15) All definitions found in Section 9-7-10, relating to the Coastal Area Management Program, shall be the definitions of the department and the Office of State Planning and Federal Programs for their Coastal Area Program.

(16) All definitions found in Section 22-30-3, relating to hazardous wastes, shall be the definitions of the department for its Hazardous Waste Program.

§ 22-22A-4. Department; generally.

(a) There is hereby created and established the Alabama Department of Environmental Management to carry out the purposes of this chapter and to administer and enforce the provisions of this chapter and all functions transferred to the department by this chapter. The department shall maintain its principal office in the city of Montgomery, Montgomery County, Alabama.

(b) The department shall be under the supervision and control of an officer who shall be designated as the director of the Alabama Department of Environmental Management. The director shall be an individual knowledgeable and experienced in environmental matters. The director shall employ such officers, agents and employees as he deems necessary to properly administer and enforce the programs and activities of the department and to fully implement the requirements of this chapter and the intent of the Legislature. All powers, duties and functions transferred to the department by this chapter, except those specifically granted to the Environmental Management Commission, shall be performed by the director; provided that the director may delegate the performance of such of his powers, duties and functions, to employees of the department, wherever it appears desirable and practicable in fulfilling the policies and purposes of this chapter. The director shall be appointed by and serve at the pleasure of the Environmental Management Commission. The director shall be exempt from Chapter 26 of Title 36. The pay of the director shall be set by the Environmental Management Commission and shall be consistent with that of cabinet level appointees.

(c) There shall be a deputy director of the department who shall be a Merit System employee. The deputy director shall assist the director and shall have charge and general supervision of the department in the absence or disability of the director. In the case of a vacancy in the office of director, the deputy director shall become the acting director of the department and shall have the full powers of the office of director until the Environmental Management Commission appoints a successor to the director.

(d) The department shall be divided into such divisions as the director deems appropriate. Each division shall be supervised by a division chief who shall be selected by the director and shall be a Merit System employee.

(e) The functions of the Air Pollution Control Commission and of the Division of Air Pollution Control in the State Health Department as set forth in Sections 22-28-1 through 22-28-23 are transferred to the department on October 1, 1982.

(f) The functions of the Water Improvement Commission, as set forth in Sections 22-22-1 through 22-22-14 are transferred to the department on October 1, 1982.

(g) The functions of the State Health Department with respect to public water systems, as set forth in Sections 22-23-30 through 22-23-53 are transferred to the department on October 1, 1982.

(h) The functions of the Alabama Water Well Standards Board, as set forth in Sections 22-24-1 through 22-24-12 are transferred to the department on October 1, 1982.

(i) The functions of the State Health Department with respect to solid waste collection and disposal, as set forth in Sections 22-27-1 through 22-27-7, which are specified below, are transferred to the department on October 1, 1982. Specifically, those functions of Section 22-27-3 relating to the location and control of solid waste disposal by sanitary landfill, incineration, or composting; and the burning of solid wastes are transferred to the department. Those provisions of Section 22-27-4 relating to the control of unauthorized dumping are transferred to the department. Those provisions of Section 22-27-5 relating to the issuance of permits to individuals or corporations engaging in the disposal of solid wastes are transferred to the department. Those provisions of Section 22-27-7 relating to the supervision and regulation of solid waste management are transferred to the department. Nothing in this chapter shall be construed to limit or curtail the authority of the State Health Department in the realm of sanitation or disease control and prevention, or in any matters relating to the public health which are not specifically transferred to the department by this chapter on October 1, 1982. Nothing in the chapter should be construed to transfer any function relating to collection of solid waste to the department. Such functions shall remain with the State Health Department or county health department as appropriate.

(j) Any permitting, regulatory and enforcement functions of the Coastal Area Board, as set forth in Sections 9-7-10 through 9-7-22 [repealed], are transferred to the department on October 1, 1982.

(k) The functions of the State Health Department, with respect to hazardous waste management, as set forth in Sections 22-30-1 through 22-30-24, are transferred to the department on October 1, 1982.

(l) The functions of the Environmental Health Administration Laboratory of the State Health Department are transferred to the department on October 1, 1982.

(m) The functions of the Board of Certification of Water and Wastewater Systems personnel and the functions of the State Health Officer as set forth in Sections 22-25-1 through 22-25-15 are transferred to the department on October 1, 1982.

(n) Beginning October 1, 1982, the department is hereby designated as the State Environmental Control Agency for the purposes of Federal Environmental Law. Specifically, the department is designated as the State Air Pollution Control Agency for

the purposes of the Federal Clean Air Act, 42 U.S.C.S. §§ 7401 et seq., as amended; as the state water pollution control agency for the purposes of the Federal Clean Water Act, 33 U.S.C.S. §§ 1251 et seq., as amended; the state agency responsible for the promulgation and enforcement of drinking water regulations in accordance with the Federal Safe Drinking Water Act, 42 U.S.C.S. 201 §§ et seq., as amended [see particularly 42 U.S.C.S. § 300f et seq]; the state agency responsible for the promulgation and enforcement of solid and hazardous waste regulations in accordance with the Solid Waste Disposal Act, 42 U.S.C.S. §§ 3251 et seq., as amended, including 42 U.S.C.S. §§ 6901 et seq., as amended; and is hereby authorized to take all actions necessary and appropriate to secure to this state the benefits of Federal Environmental Laws.

(o) Beginning October 1, 1982, the State Health Department shall provide certain routine bacteriological analyses to the Alabama Department of Environmental Management and the department shall reimburse the State Health Department for the reasonable costs and expenses incurred in providing such analyses. For an appropriate period of time, the department shall contract with the State Health Department to provide the routine bacteriological analyses necessary to the department in its Public Water Systems Program.

§ 22-22A-5. Department; powers.

In addition to any other powers and functions which may be conferred upon it by law, the department is authorized beginning October 1, 1982 to:

(1) Administer appropriate portions of Sections 9-7-10 through 9-7-20, which relate to permitting, regulatory and enforcement functions; administer and enforce the provisions and execute the functions of Chapter 28 of this title; Chapter 22 of this title; Article 2 of Chapter 23 of this title; Chapter 30 of this title; appropriate portions of Article 1 of Chapter 27 of this title; Sections 22-24-1 through 22-24-11; Sections 22-25-1 through 22-25-15; and Sections 22-36-1 through 22-36-10.

(2) Acting through the Environmental Management Commission, promulgate rules, regulations, and standards in order to carry out the provisions and intent of this chapter; provided, however, that prior to the promulgation of any state primary or secondary drinking water standard governed by Sections 22-23-30 through 22-23-53 or any regulations dealing with hazardous wastes governed by Sections 22-30-1 through 22-30-24, the department shall receive the approval of the State Board of Health. The State Board of Health shall provide the department a response to its request for approval within 60 days of receipt of such request unless such other time is mutually agreed upon by the department and the State Board of Health.

(3) Acting through the Environmental Management Commission, adopt and promulgate rules, regulations, and standards for the department, and to develop environmental policy for the state.

(4) Consistent with the provisions in subsection 22-22A-4(n), serve as the State Agency responsible for administering federally approved or federally delegated environmental programs.

(5) Serve as the state's clearinghouse for environmental data. The clearinghouse shall be developed in coordination and cooperation with other governmental data collection and record keeping systems to provide for an inventory, and for the cataloging and dissemination of environmental information.

(6) Report, as appropriate, to the Governor and to the Legislature on the programs and activities of the department and to recommend needed changes in legislation or administrative practice.

(7) Develop, conduct, and disseminate education and training programs. Pursuant to this authority, the department shall establish a citizens' advisory committee to provide input into such education and training programs.

(8) Enter into agreements and contracts, where appropriate, with other state agencies, the federal government or private individuals, in order to accomplish the purposes of this chapter.

(9) Establish and maintain regional or field offices in order to provide more effective and efficient services to the citizens of the state.

(10) Issue, modify, suspend, or revoke orders, citations, notices of violation, licenses, certifications, or permits.

(11) Hold hearings relating to any provision of this chapter or relating to the administration thereof.

(12) Enforce all provisions of this chapter and all provisions of law identified in subdivision (1) of this section and to file legal actions in the name of the department and to prosecute, defend or settle actions brought by or against the department or its agents. The Attorney General shall represent the department in any and all legal actions brought by the department to enforce any provisions of this chapter; provided however, that if, within a reasonable time after the department refers the matter to the Attorney General, the Attorney General fails to file any such action, then the department may commence appropriate legal action. Nothing in this subdivision shall be construed so as to impair the authority of the Attorney General to independently enforce the provisions of this chapter.

(13) When necessary to achieve conformance with Sections 9-7-10 through 9-7-20, acquire fee simple or less than fee simple, interest in land, water, and other property under the procedures of Title 18 or other means; provided, however, that such power shall not apply to property and interest therein which is devoted to public use.

(14) Apply for, where appropriate, accept, receive, and administer grants or other funds or gifts from public and private agencies, including the federal government, for the purpose of carrying out any of the functions, purposes, or provisions of this chapter or any of the functions or provisions transferred to the department by this chapter.

(15) Employ such professional, technical, clerical, and other workers including attorneys and special counsel, and such consultants as are necessary and within available funds to carry out the purposes of this chapter.

(16) Adopt rules and regulations relating to charging and collecting fees sufficient to cover the reasonable anticipated costs to be incurred by the department and directly related to the issuance, reissuance, modification, or denial of any permit, license, certification, or variance, such fees to include, but not be limited to, the reasonable anticipated cost of the examination and processing of applications, plans, specifications, or any other data and any necessary public hearings and investigations; provided, however, that nothing in this subdivision shall be construed as modifying or affecting the provisions of Section 22-24-5. A schedule of estimated reasonable anticipated costs shall be appended to rules and regulations with the understanding that fees may be higher or lower on a case-by-case basis.

(17) In addition to any other remedies provided by law, recover in a civil action from any person who has violated, or threatens to violate, any provision of this chapter, or any provision of law identified in subdivision (1) of this section, or any rule or regulation promulgated thereunder, or any order, or condition of any permit, license, certification, or variance issued by the department pursuant thereto, the actual costs reasonably incurred by the department to prevent, minimize or abate any adverse effect on air, land, or water resources which results or may result from such violation. Such civil actions may be filed in the circuit court of the county in which the defendant resides or does business, or in which the violation or threatened violation occurs or in which the adverse effect occurs.

(18)

a. Issue an order assessing a civil penalty to any person who violates any provision of law identified in subdivision (1) of this section, any rule, regulation, or standard promulgated by the department, any provision of any order, or any condition of any permit, license, certification, or variance issued by the department, provided however, that no such order shall be issued to a person:

1. If a civil action to recover a penalty for such violation has been commenced against such person as provided in paragraph b. of this subdivision.

2. For any violation at a coal mining operation regulated under Sections 9-16-70 through 9-16-107 or Title V of Public Law 95-87, 30 U.S.C.S. §§ 1251-1279.

3. If an order assessing a civil penalty for such violation has been issued to such person pursuant to subdivision (2) of subsection 22-28-23(b).

4. Who is a responsible corporate officer subject to a civil action for the recovery of a penalty under paragraph b. of this subdivision.

The department shall commence enforcement action under this paragraph by notifying the person subject thereto in writing of the alleged violation and affording the person an opportunity for an informal conference with the director or his or her designated representative concerning the alleged violation and any proposed order. The informal conference shall not be subject to the procedures for hearings under Section 22-22A-7. Before issuing any consent or unilateral order under this section, the department shall cause public notice to be published for one day in a newspaper of general circulation in the area where the alleged violation occurred and on the website of the department for the duration of the comment period; provided, however, that unavailability of the website during the comment period shall not affect the validity of an order issued under this paragraph. The notice shall reasonably describe the nature and location of the alleged violation and the amount of civil penalty proposed, contain a summary of any proposed corrective measures, provide instructions for obtaining a copy of the proposed order, and indicate that persons may submit written comments to the department and request a hearing on the proposed order within 30 days of the first date of publication. The department may hold a hearing if the information submitted in support of the request is material and if a hearing may clarify one or more issues raised in the written comments. If the department grants a request for a hearing, the department shall provide written notice of the time, date, and location of the hearing by regular mail at least 20 days prior to the hearing to all persons subject to the proposed order and all persons who submitted written comments on the proposed order that contain a current return address. At any such hearing, the department shall provide a reasonable opportunity for persons subject to the proposed order and persons who submitted written comments on the proposed order to be heard and to submit information to the director or his or her designated representative,

provided, however, that the hearing shall not be subject to the procedures for hearings under Section 22-22A-7, or practices or procedures governing public hearings. The department shall also accept additional written comments from any interested party that are received on or before the date of the hearing. After consideration of written comments, any information submitted at the hearing, if one was held, and any other publicly available information, the department may issue the order as proposed, issue a modified order, or withdraw the proposed order. Any order issued under this paragraph shall include findings of fact relied upon by the department in determining the alleged violation and the amount of the civil penalty and shall be served on persons subject to the order in the manner provided for service of process in the Alabama Rules of Civil Procedure. Upon issuance of an order, the department shall also provide written notice of the order by regular mail to each person who submitted written comments on the proposed order that contain a current return address. The notice shall reasonably describe the nature and location of the alleged violation and the amount of civil penalty, contain a summary of any required corrective measures, provide instructions for obtaining a copy of the order, and indicate that persons who submitted written comments on the proposed order may, within 30 days of the issuance of the order, request a hearing on the order before the Environmental Management Commission in accordance with Section 22-22A-7. Where the department has issued an order finding that a violation has occurred and assessing a civil penalty, the person subject thereto shall, unless the department and that person agree on a different schedule, pay the penalty in full within 45 days after issuance of such order unless any person has filed a timely request for a hearing to contest the issuance of such order in accordance with Section 22-22A-7, in which case the penalty assessed in the order as approved or modified by the Environmental Management Commission shall, unless the department and that person agree on a different schedule, be paid in full within 30 days after the order is approved or modified by the Environmental Management Commission or, if an appeal thereof is taken to circuit court, within 42 days after the court affirms the order as approved or modified by the Environmental Management Commission. Civil penalties assessed in an order under this paragraph and not paid as provided herein may be recovered in a civil action brought by the department in the Circuit Court of Montgomery County or the county in which the defendant does business.

b. Commence a civil action in the circuit court of the county in which the defendant or any material defendant resides or does business or in which

the violation occurred to recover a civil penalty from such person for any violation of any provision of law identified in subdivision (1) of this section, any rule, regulation, or standard promulgated by the department, any provision of any order or any condition of any permit, license, certification, or variance issued by the department, provided however, that no such civil action may be commenced against a person if an order assessing a civil penalty for such violation has been issued to such person under paragraph a. of this subdivision. Whenever such person is a corporation and the violation is of a provision of law in Chapter 22 of this title, or any rule, regulation, or standard promulgated by the department thereunder, or any provision of any order or any condition of any permit, license, certification, or variance issued by the department thereunder, the same civil penalties that may be imposed upon a person under this subdivision may be imposed upon the responsible corporate officers in a civil action. Any person having an interest which is or may be adversely affected may intervene as a matter of right in any civil action commenced under this paragraph. The Attorney General may also commence a civil action under this paragraph.

c. Any civil penalty assessed or recovered under paragraph a. or b. of this subdivision shall not exceed \$25,000.00 for each violation, provided however, that the total penalty assessed in an order issued by the department under paragraph a. of this subdivision shall not exceed \$250,000.00. Each day such violation continues shall constitute a separate violation for purposes of this subdivision. In determining the amount of any penalty, consideration shall be given to the seriousness of the violation, including any irreparable harm to the environment and any threat to the health or safety of the public; the standard of care manifested by such person; the economic benefit which delayed compliance may confer upon such person; the nature, extent, and degree of success of such person's efforts to minimize or mitigate the effects of such violation upon the environment; such person's history of previous violations; and the ability of such person to pay such penalty. Civil penalties may be assessed under this subdivision for any violation occurring within two years prior to the date of issuance of an order under paragraph a. of this subdivision or commencement of such civil action under paragraph b. of this subdivision. All civil penalties recovered under this subdivision by the department or Attorney General shall be deposited into the State Treasury to the credit of the General Fund, except that portion which represents the reasonable costs incurred by the department or Attorney General to recover such penalties which shall be deposited to the credit of the operating fund of the department or Attorney General, whichever incurred such costs.

(19) Commence a civil action in the circuit court of the county in which the defendant or any material defendant resides or does business or in which the threatened or continuing violation of any provision of law identified in

subdivision (1) of this section, any rule, regulation, or standard promulgated by the department, any provision of any order, or any condition of any permit, license, certification, or variance issued by the department. The Attorney General or district attorney having jurisdiction in the circuit, county or territory in which the threatened or continuing violation occurs may also commence a civil action to enjoin such violation. In any such action, any person having an interest which is or may be adversely affected may intervene as a matter of right.

(20) Perform any other duty or take any other action necessary for the implementation and enforcement of this chapter.

§ 22-22A-6. Commission; generally.

(a) There is hereby created a seven member Environmental Management Commission of the Alabama Department of Environmental Management which shall have the following duties:

(1) To select a director for the Department of Environmental Management and to advise the director on environmental matters which are within the department's scope of authority;

(2) To establish, adopt, promulgate, modify, repeal, and suspend any rules, regulations, or environmental standards for the department which may be applicable to the state as a whole or any of its geographical parts;

(3) To develop environmental policy for the state; and

(4) To hear and determine appeals of administrative actions.

(b) The Environmental Management Commission shall be composed of seven members who are citizens of the State of Alabama. Initial members of the commission shall be appointed to places on the Environmental Management Commission by the Governor, Lieutenant Governor, and Speaker of the House of Representatives pursuant to the procedure set out in subsection (d) with the advice and consent of the Senate. Initial appointments shall be made on or before October 1, 1982. All subsequent appointments to places on the Environmental Management Commission after the initial appointments shall be made by the Governor with the advice and consent of the Senate. No member of the Environmental Management Commission may serve more than a total of 18 years. When a vacancy occurs during a period when the Legislature is not in session to advise and consent, such appointee shall have the full power of the office until and unless the Senate, upon the reconvening of the Legislature, shall by affirmative vote refuse to consent in such appointment. Qualifications of the seven members shall be as follows:

(1) One member shall be a physician licensed to practice medicine in the State of Alabama and shall be familiar with environmental matters;

(2) One member shall be a professional engineer registered in the State of Alabama and shall be familiar with environmental matters;

(3) One member shall be an attorney licensed to practice law in the State of Alabama and shall be familiar with environmental matters;

(4) One member shall be a chemist possessing as a minimum a bachelor's degree from an accredited university or a veterinarian licensed to practice veterinary medicine in the State of Alabama and shall be familiar with environmental matters;

(5) One member who is certified by the National Ground Water Association Certification Program or is a professional geologist;

(6) One member shall be a biologist or an ecologist possessing as a minimum a bachelor's degree from an accredited university and shall have training in environmental matters; and

(7) One member shall be a resident of the state for at least two years but shall not be required to have any specialized experience.

(c) At the expiration of the terms of all members initially appointed, their successors shall be promptly appointed by the Governor for terms of six years. The Governor shall coordinate his or her appointments to assure commission membership is inclusive and reflects the racial, gender, geographic, urban, rural, and economic diversity of the state. At the expiration of a term of office or in the event of a vacancy on the Environmental Management Commission, the Governor shall promptly make an appointment to fill the vacancy. The expiring term of an incumbent member shall be continued until an appointment is made.

(d) Provided however that the initial appointments to the Environmental Management Commission shall be made as follows notwithstanding the other provisions of this chapter:

(1) The Governor shall appoint three members of the Environmental Management Commission, two of whom shall come from the voting members of the boards or commissions abolished by this chapter. The Governor's three initial appointments shall fill the positions described in subdivisions (4), (6), and (7) of subsection (b). The terms of these initial position appointments shall be for six years.

(2) The Lieutenant Governor shall appoint two members of the Environmental Management Commission, one who shall come from the voting members of the boards or commissions abolished by this chapter. The Lieutenant Governor's appointments pursuant to this subsection shall fill the positions described in subdivisions (1) and (5) of subsection (b). The term of the initial position described in subdivision (1) of subsection (b) shall be for four years. The term of

the initial position described in subdivision (5) of subsection (b) shall be for two years.

(3) The Speaker of the House of Representatives shall appoint two members of the Environmental Management Commission, one who shall come from the voting members of the boards or commissions abolished by this chapter. The Speaker of the House of Representatives' appointments pursuant to this subsection shall fill the positions described in subdivisions (2) and (3) of subsection (b). The term of the initial position described in subdivision (2) of subsection (b) shall be for four years. The term of the initial position described in subdivision (3) of subsection (b) shall be for two years.

(e) The Environmental Management Commission shall select a chair from among its members, and the chair's term of office shall be determined by the Environmental Management Commission, but shall not exceed three consecutive years. The Environmental Management Commission shall not take official action unless a quorum is present. A quorum shall be any four of the seven members. Recusal of a member shall not affect the quorum.

(f) The Environmental Management Commission shall meet regularly, at least once every two months at times and places to be fixed by the Environmental Management Commission. Special meetings may be called at the discretion of the chair of the Environmental Management Commission and special meetings shall be called by him or her on written request of any four members to take up any matters within the jurisdiction of the Environmental Management Commission. All members shall be notified of the time and place of any regular or special meeting in writing or by telegram to a member's last known address as provided to the department or by telephone.

(g) Any member of the Environmental Management Commission who misses three consecutive regularly scheduled meetings shall immediately cease to be a member of the commission and the Governor shall promptly appoint a new member with appropriate qualifications to fill the remainder of the term.

(h) The Environmental Management Commission shall keep a complete and accurate record of the proceedings of all its meetings, a copy of which shall be kept on file in the office of the director and open to public inspection.

(i)

(1) Each member shall receive one hundred dollars (\$100) per day for each day of attendance at an official meeting. Members of the Environmental Management Commission shall be reimbursed for expenses when attending meetings which are approved and certified by the director. Reimbursement shall be in accordance with Sections 36-7-1 through 36-7-42;

(2) All proper expenses of the Environmental Management Commission shall be paid from the appropriations to or funds of the department in the same manner as expenses of the department are paid.

(j) Members of the Environmental Management Commission shall meet all requirements of the state ethics law and the conflict of interest provisions of applicable federal laws and regulations.

§ 22-22A-7. Commission; powers.

(a) Beginning October 1, 1982, the Environmental Management Commission, in addition to any other authority which may be conferred upon it by law, shall have the power to:

(1) Develop and prescribe its own hearing procedures, unless otherwise specified by law; and

(2) Administer oaths, certify to official acts, take and cause to be taken depositions of witnesses, issue subpoenas, and compel the attendance of witnesses and the production of papers, books, accounts, payrolls, documents and records. In the event of failure of any person to comply with any subpoena lawfully issued, or on the refusal of any witness to produce evidence or to testify as to any matter regarding which he may be lawfully interrogated, it shall be the duty of any court of competent jurisdiction or of the judge thereof, upon the application of the Environmental Management Commission or its designee, to compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued by such court or a refusal to testify therein. The fees of witnesses for attendance and travel shall be the same as fees of witnesses before courts of record and shall be paid from the funds of the department.

(b)

(1) The Environmental Management Commission may delegate the power to hear appeals which are before it to a hearing officer. Any such hearing conducted by a hearing officer shall be in accordance with rules and regulations prescribed by the Environmental Management Commission pursuant to subdivision (1) of subsection (a) of this section, and in such case the hearing officer shall prepare findings of fact, conclusions of law and recommendations to the Environmental Management Commission for its final decision.

(2) The Environmental Management Commission may hire hearing officers to hear appeals which are before it. Such hearing officers shall be attorneys licensed to practice in the State of Alabama and shall be paid appropriately from department funds.

(c) Upon a proper request made in accordance with subdivisions (1) or (2) of this subsection and any hearing procedures prescribed by the Environmental Management

Commission, any person aggrieved by an administrative action of the department shall be entitled to a hearing before the Environmental Management Commission or its designated hearing officer. To obtain a hearing on any order assessing a civil penalty issued pursuant to subdivision (18) of Section 22-22A-5, an aggrieved person shall either be subject to the order or have submitted timely written comments on the proposed order in accordance with subdivision (18) of Section 22-22A-5.

(1) Request for such hearing to contest an administrative action of the department, other than to contest the issuance of any rule or regulation or emergency order, must be filed with the Environmental Management Commission within 30 days of the contested administrative action.

(2) Request for a hearing before the Environmental Management Commission or its designated hearing officer to contest the issuance of any rule or regulation by the department must be filed with the Environmental Management Commission within 45 days of the promulgation of the rule or regulation by the department; except, that if such request is based solely on grounds arising after such forty-fifth day, then any request for a hearing under this subdivision must be filed within 45 days after such grounds arise.

(3) The Environmental Management Commission or its designated hearing officer shall within a reasonable time, not to exceed 45 days after receipt of a request in accordance with subdivisions (1) or (2) of this subsection, hold a hearing of which at least 15 days' written notice shall be given to such person requesting the hearing and any other named or necessary party. Within 30 days after such hearing, the Environmental Management Commission shall issue an appropriate order modifying, approving or disapproving the department's administrative action. A copy of the Environmental Management Commission's order shall be served upon all parties either personally, by registered mail or by certified mail return receipt requested. The notice and hearing requirements of this subsection shall not apply to emergency orders. Hearings on emergency orders shall be held before the Environmental Management Commission and notice of such hearing as may be reasonable under the circumstances shall be given to such persons as the Environmental Management Commission deems appropriate.

(4) Pending the determination by the Environmental Management Commission, and upon application therefor, the Environmental Management Commission may stay the operation of such administrative action upon such terms and conditions as it may deem proper.

(5) The parties shall not be bound by the strict rules of evidence prevailing in the courts. However, a full and complete record shall be kept of all proceedings before the Environmental Management Commission. All testimony or comments given in any hearing before the Environmental Management Commission shall be electronically or stenographically recorded, but need not be transcribed unless an

appeal is taken to court or unless requested by any party who shall pay for the cost of transcription.

(6) Any order of the Environmental Management Commission made pursuant to the above procedure, modifying, approving or disapproving the department's administrative action, constitutes a final action of the department and is appealable to the Montgomery County Circuit Court or the circuit court in which the applicant does business or resides for judicial review on the administrative record provided that such appeal is filed within 30 days after issuance of such order.

(7) Administrative action with respect to which review was or could have been obtained under this section shall not be subject to judicial review in any civil or criminal proceeding for enforcement.

§ 22-22A-8. Rules and regulations.

(a) All rules, regulations or standards shall be adopted by and promulgated by the Environmental Management Commission. With the exception of editorial changes, no rule, regulation or standard shall be adopted, amended or repealed unless such rule, regulation or standard has been reviewed by the director and until after a public hearing has been held. Unless different notice provisions are specifically required elsewhere by law, at least 45 days prior to the scheduled date of the hearing the department shall give notice of such hearing by public advertisement in the three newspapers of this state with the largest regional circulation of the date, time, place and purpose of such hearing; and make available to any person upon request copies of the proposed rules, regulations or standards, together with summaries of the reasons supporting their adoption, amendment or repeal.

(b) Any public hearing relating to the adoption, amendment or repeal of department rules, regulations or standards under this section shall be held before a department representative, who shall be designated by the Environmental Management Commission. All such hearings shall be open to the public, and reasonable opportunity to be heard with respect to the subject of the hearing shall be afforded to any person. All testimony taken before the department representative shall be recorded and transcribed. The transcript, any exhibits or any written submissions to the department in relation to such hearings shall be open to public inspection.

(c) After such hearing, the department may revise the proposed rules, regulations or standards, before adoption in response to testimony, written submissions or exhibits introduced at the hearing, without conducting a further hearing on the revisions.

(d) Nothing in this section shall be construed to require a hearing prior to the issuance of any temporary emergency rule or regulation.

§ 22-22A-9. Transfers to department; generally.

(a) All employees engaged in duties pertaining to the functions transferred by this chapter to the department, shall be assigned to the department on October 1, 1982, to perform their usual duties, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing personnel and employees.

(b) All files, books, papers, records, equipment, furniture, motor vehicles, any other tangible property, and any other asset employed in carrying out the powers, duties and functions transferred by this chapter to the department shall, on October 1, 1982, be transferred to the department.

(c) All reports, documents, surveys, books, records, files, correspondence, papers or other writings in the possession of any department, division, bureau, board, commission or other agency, the functions, powers and duties of which have been transferred to the department by this chapter, or which have been employed in carrying out the functions, powers and duties transferred by this chapter to the department shall, on October 1, 1982, be transferred to the department.

(d) All funds, credits or other moneys held in connection with the functions transferred by this chapter, shall be transferred to the Alabama Department of Environmental Management Fund created by Section 22-22A-11 on October 1, 1982. Subsequent to the transfer of all funds, credits or other moneys to the department for programs whose functions are transferred by this chapter to the department, the Water Improvement Commission Fund established by Section 22-22-10; the Safe Drinking Water Fund established by Section 22-23-51; the Well Driller Licensing Fund established by Section 22-24-10; the Operator's Certification Fund established by Section 22-25-10; and the Hazardous Waste Management Fund established by Section 22-30-23 are abolished, and any funds from any source whatsoever which may accrue to any of the foregoing funds in the future shall accrue to the Alabama Department of Environmental Management.

(e) Any appropriation made for the purpose of carrying out the powers, duties and functions transferred by this chapter to the department, shall on October 1, 1982, be transferred and credited to the department for the purpose of carrying out such transferred powers, duties and functions.

(f) Except where in conflict with provisions of this chapter, on October 1, 1982, all rules, regulations, standards, comprehensive plans for the prevention, abatement and control of pollution in this state; and all orders, permits, licenses, certificates, bonds and variances of the departments, divisions, boards, commissions, or other agencies, relating to the functions transferred by this chapter to the department, are enforceable as the rules, regulations, standards, plans, orders, permits, licenses, certificates, bonds and variances of the department and shall continue to be effective until revised, amended, repealed or nullified pursuant to law.

(g) All pending business before the boards, commissions, or agencies affected by this chapter, relating to the functions transferred by this chapter to the department, shall be

continued and acted upon by the department. All existing contracts, obligations and memoranda of understanding pertaining to the functions transferred by this chapter to the department, shall remain in force and effect and shall be performed by the department.

(h) All state officials required to maintain contact with or provide services to any agency, board or commission affected by this chapter shall continue to perform such services for the department unless otherwise directed by this chapter.

(i) Neither the abolition of any agency nor any of the transfers authorized by this chapter shall affect the validity of any action performed by such agency, board or commission affected by this chapter, prior to October 1, 1982.

(j) Except where required elsewhere by the chapter, on October 1, 1982, the performance of any such transferred duties or functions by the department or its respective divisions shall have the same effect as if done by the former agency, board or commission referred to or designated by law or contract. The reference to or designation of the former agency, board or commissions shall apply to the department.

(k) During an appropriate transition period after October 1, 1982, the State Health Department shall continue to assist the department in personnel and fiscal matters in order to effect the smooth transition of such functions to the department.

§ 22-22A-10. Coastal Area Board transferred to department.

(a) On October 1, 1982, all functions of the Coastal Area Board, as set forth in Sections 9-7-10 through 9-7-22, except those which relate to permitting, regulatory and enforcement functions, shall be transferred to the Office of State Planning and Federal Programs established pursuant to Sections 41-9-205 through 41-9-214.

(b) All employees engaged in duties pertaining to the functions transferred by this section, shall be assigned to the Office of State Planning and Federal Programs on October 1, 1982 to perform their usual duties, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing personnel and employees.

(c) All files, books, papers, records, equipment, furniture, motor vehicles, any other tangible property and any other asset employed in carrying out the powers, duties and functions transferred by this chapter to the Office of State Planning and Federal Programs shall, on October 1, 1982, be transferred to the Office of State Planning and Federal Programs.

(d) All reports, documents, surveys, books, records, files, correspondence, papers or other writings in the possession of the Coastal Area Board, the functions, powers and duties of which have been transferred to the Office of State Planning and Federal Programs by this chapter, or which have been employed in carrying out the functions, powers and duties

transferred by this chapter to said office shall, on October 1, 1982, be transferred to the Office of State Planning and Federal Programs.

(e) All funds, credits or other moneys held in connection with the functions transferred by this chapter to the Office of State Planning and Federal Programs, shall be transferred to said office on October 1, 1982. Subsequent to the transfer of all funds, credits or other moneys to the Office of State Planning and Federal Programs, the coastal area board fund established by Section 9-7-19 [repealed] is abolished.

(f) Any appropriation made to the Coastal Area Board for the purpose of carrying out the powers, duties and functions transferred by this chapter to the Office of State Planning and Federal Programs shall, on October 1, 1982, be transferred and credited to said office for the purpose of carrying out such transferred powers, duties and functions.

(g) The Office of State Planning and Federal Programs shall provide the department sufficient funds to administer the permitting, regulatory and enforcement functions of the Coastal Area Management Program from those federal funds obtained by the office for such purposes.

(h) All pending business before the Coastal Area Board, relating to the functions transferred by this chapter to the Office of State Planning and Federal Programs, shall be continued and acted upon by said office. All existing contracts, obligations and memoranda of understanding pertaining to the functions herein transferred shall remain in force and effect and shall be performed by the Office of State Planning and Federal Programs.

(i) All State Officials required to maintain contact with or provide services to the Coastal Area Board shall continue to perform such services for the Office of State Planning and Federal Programs or as otherwise directed by this chapter.

(j) Neither the abolition of the Coastal Area Board nor any of the transfers to the Office of State Planning and Federal Programs authorized by this chapter shall affect the validity of any action performed by the Coastal Area Board, prior to October 1, 1982.

§ 22-22A-11. Environmental management fund.

There is hereby created a fund known as the Alabama Department of Environmental Management Fund. This fund shall consist of: (1) all appropriations; (2) all grants, gifts, bequests or donations; (3) all money derived through any source of federal aid; (4) all fees; (5) all moneys from any program whose functions were transferred to the department by this chapter; and (6) all moneys from any other source whatsoever. However, the department may not solicit or accept any gift or donation from any person that has any official request or action pending before the Alabama Department of Environmental Management. All moneys deposited in said fund are hereby appropriated to the use of the department in addition to any other appropriations heretofore or hereafter made. The fund shall be used and expended by the department in accordance with the

terms of the appropriations, gift, bequest, grant, donation or transfer from which said moneys are derived and in the absence of any such terms or stipulations, shall be expended by the department in furtherance of any of the provisions of this chapter. All necessary expenses of the department shall likewise be paid out of the fund on the requisition of the director as may be deemed advisable.

§ 22-22A-12. Coastal Resources Advisory Committee.

(a) There is hereby created a Coastal Resources Advisory Committee to advise the department and the Office of State Planning and Federal Programs on all matters concerning the coastal area. The committee shall consist of not less than seven members who shall be predominantly from Baldwin and Mobile Counties.

(b) The initial members of the Coastal Resources Advisory Committee shall be the current Coastal Area Board established by Section 9-7-14, as amended and abolished by this chapter. The terms of the initial members of the committee shall be for one year beginning October 1, 1982.

(c) The subsequent membership of the Coastal Resources Advisory Committee shall be as follows:

- (1) One member shall be a member of the Mobile City Commission and shall be selected by that commission;
- (2) One member shall be a member of the Mobile County Commission and shall be selected by that commission;
- (3) One member shall be a member of the Baldwin County Commission and shall be selected by that commission;
- (4) One member shall be an official of a municipal corporation in Baldwin County and shall be selected by the Baldwin County Mayors Association;
- (5) One member shall be the Commissioner of Conservation and Natural Resources, who may designate an employee of his department to represent him on the committee;
- (6) One member shall be the State Geologist who may designate an employee of his agency to represent him on the committee; and
- (7) One member shall be the director of the Marine Environmental Science Consortium.

The term of each of these members of the Coastal Resources Advisory Committee shall be consistent with his elective or appointive office.

(d) Additional members of the Coastal Resources Advisory Committee may be appointed by the Governor for terms not to exceed four years and shall be eligible for reappointment.

(e) The committee shall meet initially to select a chairman and subsequent meetings of the committee shall be at the call of the chairman of the Coastal Resources Advisory Committee or the director of the Office of State Planning and Federal Programs.

§ 22-22A-13. Remedies cumulative.

All remedies for the prevention and abatement of pollution given to the Attorney General through the authority of this chapter are merely cumulative. Except as provided in subdivisions (12) and (15) of Section 22-22A-5 nothing in this chapter shall be interpreted as negating or destroying any common law or statutory right, duty, power or authority of the Attorney General of Alabama.

§ 22-22A-14. [Repealed.]

§ 22-22A-15. Construction of chapter.

No provision of this chapter shall be construed to repeal in whole or in part any provision of Section 22-30-5.1.

§ 22-22A-16. Pollution Control Grant Fund.

(a) There is hereby created a fund known as the Pollution Control Grant Fund. This fund shall consist of

(1) All appropriations made to the fund; and

(2) All grants, gifts, bequests or donations made to the fund from any source whatsoever. This fund shall be used and expended by the Alabama Department of Environmental Management in accordance with the terms of the appropriation, gift, bequest, grant or donation from which said moneys are derived and in the absence of such terms or stipulations, shall be expended by said department in accordance with the provisions of subsection (b). All necessary expenses of said department in implementing the provisions of this section shall likewise be paid out of the fund on the requisition of the director of said department as may be deemed advisable.

(b) Except as provided in subsection (a), the Alabama Department of Environmental Management is authorized to make grants to any county, municipality or public corporation, agency or instrumentality organized under the laws of the state, for the purpose of carrying out any air, land or water pollution control, prevention or abatement practices, measures, experiments or research, from the Pollution Control Grant Fund and

to enter into and carry out contracts or agreements in connection therewith and include in any contract or agreement such conditions as it may deem reasonable and appropriate.

(c) Acting through the Environmental Management Commission, the Alabama Department of Environmental Management is authorized to promulgate rules, regulations and standards to carry out the provisions of this section.

335-6-7-.26 Land Application And Manure Management Requirements.

(1) The WMSP, prepared by the QCP with the NOR prior to construction and operation of a new CAFO, prior to construction and operation of additional facilities at an existing CAFO, as required to continue operation of an existing CAFO, or as otherwise required by the Director or his designee, are incorporated into the requirements of this Chapter by reference. All provisions of the WMSP accepted by the Department become enforceable conditions of this Chapter. Only areas identified in the approved WMSP shall be used for the disposal of animal liquid wastes, manure, litter, and mortality compost, and shall be located to prevent any pollutant from such materials from entering waters of the State to the maximum extent practicable. Unless waste disposal and land application responsibilities are contracted in writing to a valid CAWV, all new sites not identified in the approved WMSP at the time of registration under this Chapter must be accepted by the Department prior to its use as a land application site.

(2) Unless alternate practice(s) or buffer distances are approved in writing by the Director or his designee, in order to ensure the protection of water quality, all AFOs shall ensure that:

(a) Land application of waste/wastewater shall be conducted in accordance with NRCS technical standards and guidelines, the approved WMSP, the requirements of this Chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(b) Any application of waste/wastewater shall be conducted in such a manner so as to prevent to the maximum extent practicable discharges of pollutants to groundwater or surface waters of the State.

(c) Application of waste/wastewater shall be conducted in a manner that meets or exceeds NRCS technical standards and guidelines, the approved WMSP, the requirements of this Chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, and is protective of water quality, but in no case shall be made within 50 feet of surface waters of the State including, but not limited to, perennial or intermittent streams, ponds, lakes, springs, or sinkholes; or within 100 feet of non-potable water wells and water supplies, or within 200 feet of PWS, ONRW or OAW classified/designated waters, or potable water wells and water supplies. Buffer distances for streams, ponds and lakes shall be measured from the ordinary high water mark. Buffer distances in excess

of 50, 100, or 200 feet may be required according to site specific conditions or according to NRCS guidelines. The Department may require additional buffer distances deemed necessary to protect waters of the State on an individual facility basis.

(d) Unless responsibility for wastes are properly assumed by a CAWV, the owner/operator shall ensure that the land owner of any offsite land application site not owned or controlled by the registrant, abides by the applicable requirements of this Chapter.

(e) The owner/operator shall ensure that appropriate waste handling equipment is available and used for effective operation of the application system.

(f) Storage/treatment of manure or wastewater in the 100-year flood plain is prohibited unless storage/treatment structure is constructed, maintained, and effectively protected in a manner that meets or exceeds NRCS technical standards and guidelines to prevent inundation, damage for that flood event, or discharge to waters of the State. The land application of AFO wastes at agronomic rates shall not be considered surface disposal in this case and is not prohibited if applied in a manner that meets or exceeds NRCS technical standards and guidelines, the approved WMSP, the requirements of this Chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(g) Effective management practices to protect water quality and minimized odors to the maximum extent practicable that meet or exceed NRCS technical standards and guidelines must be implemented and maintained for all manure/waste storage areas. Any runoff from manure storage piles must be retained on site and not discharged to groundwater or surface waters of the State.

(h) Temporary or permanent stockpiling or storage of waste/manure near watercourses or waters of the State during land application operations shall be done in a manner that meets or exceeds NRCS technical standards and guidelines and that will prevent discharge to a water of the State and minimize odors to the maximum extent practicable.

(i) Dead and diseased animals shall be managed and disposed of in accordance with NRCS technical standards and guidelines and as approved by the State Veterinarian, ADAI. Dead and diseased animal management and disposal shall be addressed in any WMSP submitted with an NOR, and as approved by the Department.

(j) Waste/wastewater shall be evenly distributed over application sites according to the approved nutrient management plan and according to NRCS technical standards and guidelines.

(k) Land application of waste/wastewater shall not be undertaken or continue when soil is saturated as defined in NRCS technical standards and guidelines, frozen, covered with ice or snow, during precipitation, or when significant precipitation as defined in NRCS technical standards and guidelines is reasonably expected within the next 72 hours. Waste/wastewater shall be applied in accordance with NRCS technical standards and guidelines and the WMSP. Waste/wastewater shall only be applied on days of the year and during times consistent with NRCS technical standards and guidelines and the WMSP. Land application shall be conducted when vegetation on the site is actively growing or waste/wastewater can be applied to land up to 30 days prior to planting a crop (row or forage). If applied to conventional tillage (farm tillage practices which result in complete surface disturbance and/or soil inversion or minimal surface residues) cropland or to pasture or hay land being renovated or established, the waste/wastewater shall be incorporated immediately after application. Waste/wastewater does not have to be incorporated when applied to conservation tillage (farm tillage practices which manage and maintain plant residues on the soil surface) crop, hay, or pastureland.

(l) Waste/wastewater shall not be applied on slopes with a steep grade as defined by NRCS technical standards and guidelines and in any manner that will allow waste/wastewater to enter drainage conveyance structures, enter waters of the State or to run onto adjacent property without the written consent of the affected adjacent property owner. Effective vegetative filters that meet or exceed NRCS technical standards and guidelines and the requirements of this Chapter shall be maintained between application sites and waters of the State.

(m) Surface and subsurface (plowing, injection into topsoil, etc.) application of waste/wastewater shall be done in a manner that meets or exceeds NRCS technical standards and guidelines to ensure the protection of groundwater and surface water quality in nearby streams including, but not limited to, perennial streams, intermittent streams, ponds, lakes, springs, sinkholes, rock outcrops, wells and water supplies, wetlands, or PWS, ONRW, and OAW classified/designated waters.

(n) Application of waste/wastewater near property lines shall be done in a manner to minimize odors to the maximum extent practicable, effectively control waste/wastewater application to prevent overland flow and significant aerial drift, from crossing any property line. Application of waste/wastewater near public roads shall be done in a manner that protects vehicles and the general public, effectively prevents application of waste/wastewater on the road, effectively prevents waste/wastewater from entering roadside drainage conveyance structures, and meets or exceeds NRCS technical standards and guidelines.

(o) After April 1, 1999, application of waste near property lines or neighboring occupied buildings shall be done in a manner that meets or exceeds NRCS

technical standards and guidelines, but in no case shall be closer than 100 feet from the nearest existing occupied dwelling, church, school, hospital, or park.

(p) Aerial or spray irrigation, or other type pumped or pressurized surface land application of wastewater shall be done in a manner that meets or exceeds NRCS technical standards and guidelines, but in no case shall be closer than 500 feet from the nearest existing occupied dwelling, church, school, hospital, or park. Non-pumped surface application, or soil subsurface injection/application or wastewater shall be done in a manner that meets or exceeds NRCS technical standards and guidelines, but in no case shall be closer than 200 feet from the nearest existing occupied dwelling, church, school, hospital, or park.

(q) The restrictions regarding property lines or neighboring buildings shall not apply if the adjoining property is also approved as a land application site under this Chapter and if the adjoining property owner consents in writing. Buffer distances in excess of 100, 150, or 500 feet may be required according to site specific conditions or according to NRCS guidelines. The Department may require additional buffer distances deemed necessary to protect waters of the State on an individual facility basis.

(r) Application of waste/wastewater shall not be made in areas where such land application is prohibited by the Department for the protection of public water supplies, groundwater and surface water quality, or Alabama Department of Public Health Rules for the protection of human health and welfare.

(s) Land application practices shall be managed so as to minimize to the maximum extent practicable ponding or puddling of wastewater on the site and the occurrence of nuisance conditions such as odors and flies.

(t) Facilities, including, but not limited to, ponds/sumps, lagoons, pipes, ditches, pumps, diversion and irrigation equipment, and other equipment shall be maintained to ensure ability to fully comply with the terms and conditions of this Chapter and the pollution prevention plan.

(3) Unless responsibility for wastes is properly assumed by a CAWV in writing, or the owner/operator properly sells or gives away in good faith the waste to another person, AFO owners/operators shall keep complete records of all surface and subsurface application of waste and wastewater. A detailed log shall be kept of all surface and subsurface applied waste/wastewater, which will include the date, weight and/or volume, and destination and acreage over which the load was spread. All records and logs shall be kept at the facility and provided to the Department upon request. These records shall be kept in sufficient detail to determine application rates. If the waste is sold or given away in good faith, the owner/operator shall retain detailed, complete records of the transaction and provide the receiver of the waste information explaining the requirements of this Chapter. Unless responsibility for wastes is properly assumed by a CAWV in writing, to

the extent allowed by law, the owner/operator shall remain responsible for the proper disposition of the waste.

(4) The rate of land application of waste/wastewater can be based on either a laboratory analysis of a representative waste/wastewater sample or on the average nutrient values according to NRCS technical standards and guidelines for the type waste and animal operation. If NRCS approved average nutrient/component values for the appropriate animal type are used, a representative sample of waste and/or wastewater to be land applied need only be collected as often as is determined necessary by the QCP to ensure consistency with NRCS approved average nutrient/component values. Unless NRCS approved average nutrient/component values are used, a representative sample of waste and/or wastewater to be land applied shall be collected periodically, but at least annually, and analyzed using an analytical methodology accepted by the Department for the following parameters:

- (a) pH.
- (b) Total Nitrogen.
- (c) Ammonium Nitrogen.
- (d) Total Phosphorus.
- (e) Total Potassium.
- (f) Percent Solids.
- (g) Selected metals (e.g. zinc, copper, arsenic, etc.) which could become concentrated in animal wastes and in some cases are added to the animal feed producing the waste being tested.
- (h) Any parameter(s) as may be required by the Director or his designee.

(5) The surface soils (0-3 inches in sod crops and depth of plow layer in cultivated crops) of each field where waste/wastewater has been or will be land applied shall be sampled according to accepted standard soil sampling procedures. Soils shall be evaluated and analyzed using analytical methodology appropriate for the soils and nutrients to be tested as outlined in:

(a) Soil Test Methods for the Southern Region of the United States, 1983, Southern Cooperative Service Bulletin, 289, University of Georgia, Athens, Georgia, or

1. Reference Soil and Media Diagnostic Procedures for the Southern Region of the United States, 1992, S.J. Donahue (ed.), Southern

Cooperative Service Bulletin 374, Virginia Polytechnic Institute and State University, Blacksburg, Virginia, or

2. Soil Test Fertilizer Recommendations For Alabama Crops, 1994, J.F. Adams, C.C. Mitchell, and H.H. Bryant, Agronomy And Soils Department Series No. 178 (as amended), Auburn University, Alabama, or

3. Other analytical methodology(s) as may be approved by the Director or his designee.

(b) Soil samples shall be collected and analyzed at a frequency that meets NRCS technical standards and guidelines, and as often as is necessary to ensure protection of groundwater and surface water quality. Analyses shall include:

1. Soil pH and lime requirement for the soil and crop to be grown.

2. Extractable phosphorus.

3. Extractable zinc, copper, arsenic, and other selected metals, if it is determined by the QCP that it is probable that one or more metals (which could become concentrated in animal wastes and in some cases are added to the animal feed producing the waste being tested) are present in sufficiently high concentrations in the land applied waste or wastewater, or naturally present in the soil, that further soil accumulation could become toxic to plants or animals or potentially impact groundwater or surface water quality.

4. Any parameter(s) as may be required by the Director or his designee.

(6) The Department may require more frequent testing deemed necessary to protect waters of the State.

(7) Methods and timing of sampling and analysis described in this Chapter shall be in a manner that meets or exceeds NRCS technical standards and guidelines.

(8) Annual reports for the previous year shall be submitted on forms approved by the Department with submittal of the NOR for continued coverage and must include the following:

(a) Any waste/wastewater analyses conducted;

(b) Any soils analyses conducted;

(c) Locations, volumes, and nutrient application rates for the previous year;

(d) Methods of land application;

(e) Types and uses of crops or vegetation grown on each land application site and plans/procedures for protective storage and/or removal of harvested crops or vegetation from the field;

(f) Documentation of any point source or nonpoint source discharges resulting from improper land application, spills, bypasses, etc., including actions taken by the owner/operator to correct any deficiencies as required by this Chapter.

2) Ala. Admin. Code r. 335-6-20-.14

335-6-20-.14 Buffer Distances.

(1) Buffer Distance Considerations. Buffer distances shall be established for the following purposes:

(a) To protect public health by limiting exposure to reclaimed water and conditions associated with reuse facilities;

(b) To protect waters of the state, including surface water, ground water and public and private drinking water supplies; and

(c) To help ensure that the reuse of reclaimed water is restricted to within the physical boundaries of the reuse facilities.

(2) Buffer Distances.

(a) The minimum distance from any reclaimed water pipeline to a potable water supply well shall be fifty feet.

(b) The minimum distance from a nonresidential spray irrigation system to a potable water supply well, water of the State, or drainage to a water of the State or wetland shall be fifty feet.

(c) The minimum distance for spray application using high trajectory nozzles to a property boundary or inhabited dwelling shall be fifty feet.

(d) The minimum distance for spray application of Class A reclaimed water to a property boundary or inhabited dwelling shall be zero (0) feet; however, aerosol formation shall be minimized within fifty feet of a property boundary or inhabited dwelling through the use of low trajectory nozzles for spray irrigation or above-ground drip irrigation.

(e) The minimum distance from a lined impoundment to a potable water supply well shall be 100 feet.

(f) The minimum distance from an unlined impoundment to a potable water supply well is 500 feet.

(g) The Department may require a different buffer distance on a case-by-case basis.