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Nutrient Management Plans Statutes & Regulations

Alabama

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Nutrient Management Plans

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-.01—.04, .06, .07, .09, .10, .13, .14, .20(1—4, 19, 20), .21, .22, .26, .28(1, 2(a), (b), (h), (i), (j))**
- 2) **Ala. Admin. Code. r. 335-6-20-.01, .02, .03, .07, .08(6), .10(1(a))**

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-.01—.04, .06, .07, .09, .10, .13, .14, .20(1—4, 19, 20), .21, .22, .26, .28(1, 2(a), (b), (h), (i), (j))

§ 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-.01 Purpose.

(1) The purpose of this Chapter is for the Department, with input from the agricultural community, the environmental community, interested governmental resource agencies, and other stakeholders, to establish the minimum qualifications, standards and procedures, technical standards, construction and operation requirements, best management practices (BMPs), and waste/wastewater storage, treatment, handling, transport, disposal/land application, and dead animal disposal requirements for owners/operators of AFOs to protect water quality within the State as mandated by applicable State and federal law, and pursuant to the requirements of the National Pollutant Discharge Elimination System (NPDES).

(2) The Department intends to partner with the Natural Resources Conservation Service (NRCS), Alabama Soil and Water Conservation Committee (ASWCC), Auburn University College of Agriculture, Alabama Cooperative Extension System (ACES), Alabama Department of Public Health (ADPH), Alabama Department of Agriculture and Industries (ADAI), and other interested resource agencies to the extent possible through establishment of a formal Memorandum of Agreement (MOA) that describes joint administrative procedures and technical standards necessary to implement the requirements of this Chapter and draw on the strengths of each resource agency to avoid duplication, conflicting regulatory requirements, or conflicting technical standards. Any MOA, guidance documents, forms, or other information will be incorporated into and updated as appropriate in the Alabama Nonpoint Source Management Program document, as amended.

(3) The Department's goal is to minimize administrative requirements while promoting and encouraging voluntary good stewardship in a continuing effort to implement an effective management program tailored to the needs of Alabama. This Chapter provides for management, operational and maintenance procedures required by all AFO owners/operators to prevent point source pollution and minimize nonpoint source pollution to groundwater and surface waters of the State and control to the degree practicable the generation of offensive odors and breeding of nuisance pests by AFOs,

and further provides for preparation and implementation of an approved, comprehensive Waste Management System Plan (WMSP) and registration by all CAFO owners/operators.

(4) The buffer requirements set forth in this Chapter are intended to protect water quality, protect public health, and minimize odor to the maximum extent practicable. It is recognized that the generation of odor is inherent to animal agriculture. In order to minimize odor and nuisance pests, owner/operators are encouraged to adopt a good neighbor policy, and are required to implement odor and nuisance pest minimization BMPs in the operation of animal waste management systems.

(5) Unless approved otherwise by the Director or specifically provided for otherwise in this Chapter, it is intended that all BMP design, implementation, and maintenance, pollution prevention/control, land application, buffers, waste storage, treatment, handling, transport, and disposal, dead animal disposal, facility construction, facility operation, facility management, and facility closure for AFOs shall meet or exceed the criteria of NRCS technical standards and guidelines and shall evaluate and implement as appropriate NRCS planning considerations and recommendations, and in such a manner to ensure protection of water quality. The Director retains final authority regarding disputes of a technical nature, prohibiting implementation of accepted practices which may not be protective of water quality in some situations, or for implementation of management practices not included in NRCS technical standards and guidelines, and as otherwise provided by law.

(6) Buffers, operation, management, monitoring, record keeping, continuing education, implementation of NRCS technical standards and guidelines, and other management practices required by this Chapter are intended and established as regulatory common sense minimum requirements within the Department's statutory authority to ensure protection of the environment. It is anticipated that additional efforts to be good neighbors, enhance the farming operation, or assist resource agencies will be implemented voluntarily by many AFO owners/operators.

335-6-7-.02 Definitions.

The following words and terms, when used in this Chapter, shall have the following meanings unless the context clearly indicates otherwise or unless a different meaning is stated in a definition applicable to only a portion of this Chapter. Unless manifestly inconsistent with this Chapter, other words and phrases used in this Chapter shall have the same meaning as used in Chapters 335-6-3, 335-6-6, 335-6-10, 335-6-11, and the AWPCA.

(a) "AAPCA" means the Alabama Air Pollution Control Act, as amended.

(b) "ADAI" means the Alabama Department of Agriculture and Industries, including the office of the State Veterinarian.

(c) "ADEM" (Department) means the Alabama Department of Environmental Management.

(d) "ADPH" means the Alabama Department of Public Health.

(e) "Agricultural Waste" means animal production by-products including animal waste, wastewater, manure, litter, bedding material, feces, urine, washdown water, dead animals, compost, dead animal compost, or other potential nutrient sources or pollutants generated by operation of an Animal Feeding Operation (AFO).

(f) "Agronomic Rates" means the land application of animal wastes at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth in accordance with NRCS technical standards and guidelines to ensure the protection of groundwater and surface water quality.

(g) "Ancillary Equipment" means any devices including, but not limited to, such devices as piping, pumps, concrete conveyances, etc. used to distribute, meter, or control the flow of wastes.

(h) "Animal Feeding Operation" (AFO) means a lot or facility (other than an aquatic animal production facility) where animals (does not have to be the same animals) have been, are, or will be stabled, confined, gathered, or concentrated and fed or maintained (watered, cleaned, groomed, medicated, etc.) for a total of 45 days (days do not have to be consecutive) or more in any 12-month period (period does not have to correspond to the calendar year), and the animal confinement areas do not sustain crops, vegetation, forage growth, or post-harvest residues in the normal growing season as generally described in 40 CFR (Code of Federal Regulations) 122.23(b)(1). Two or more AFOs under common ownership are considered a single AFO and may require Registration as a CAFO if they adjoin, or are in close proximity to each other as determined by the Director or his designee. Unless determined otherwise by the Director or his designee, two or more AFOs under common ownership or under different ownership are considered a single AFO and may require Registration as a CAFO, separately or together, if they are operated as a single operation, if they use a common area or system for the disposal of waste/wastewater, if they significantly share resources, storage or treatments systems, equipment, etc., or otherwise significantly link operations. Each owner/operator of an AFO that adjoins or is in close proximity to another AFO, or shares resources or has links to other operations, can contact the Department for clarification in writing of the status of their facility(s).

(i) "Animal Unit" (AU) means a unit of measurement for any AFO calculated by adding the following numbers: the number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing greater than or equal to 55 pounds multiplied by 0.4, plus the number of swine weighing greater than or equal to 15 pounds and

less than 55 pounds multiplied by 0.25, plus the number of swine weighing less than 15 pounds multiplied by 0.1, plus the number of goats multiplied by 0.16, plus the number of emus multiplied by 0.16, plus the number of rabbits multiplied by 0.016, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0, and as designated in rule 335-6-7-.10. Where an AU is not specifically defined in this Chapter for an animal (e.g. nutria, other ratites, reptiles, brood cows, etc.), an appropriate AU is determined comparing live weight equivalent waste quantity and constituent composition (limiting nutrients, moisture, additive compounds, etc.) from the most similar type animal with a defined AU.

(j) "Animal Waste Management System" means any system used for the collection, storage, treatment, handling, transport, distribution, land application, or disposal of agricultural wastes, animal waste/wastewater, waste product, and dead animals generated by an AFO that meets or exceeds NRCS technical standards and guidelines.

(k) "AWPCA" means the Alabama Water Pollution Control Act, as amended.

(l) "Best Management Practices" (BMPs) means schedules of activities, prohibitions of practices, maintenance procedures, and other effective management practices that meet or exceed NRCS technical standards and guidelines, NRCS Comprehensive Nutrient Management Plan (CNMP) guidelines, and Departmental requirements that are implemented to the maximum extent practicable to prevent or reduce pollutant discharges to waters of the State. BMPs also include effective treatment requirements, operating procedures, and practices to control construction and operation, site runoff, spillage or leaks, sludge or waste/wastewater transport, storage, disposal or land application, dead animal disposal, or drainage from raw material handling and storage. BMPs also means full implementation and continued maintenance of appropriate structural and non-structural practices and management strategies to prevent and minimize the introduction of pollutants to stormwater and to treat stormwater to remove pollutants to the maximum extent practicable prior to discharge.

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

(n) "CWA" means the Federal Water Pollution Control Act (FWPCA), 33 U.S.C. § 1251 et seq., as amended.

(o) "Certified Animal Waste Vendor" (CAWV) means any person certified by the Department, or certified by another agency in cooperation with the Department, to accept liability and responsibility for AFO waste, obtain required continuing education, keep required records, and effectively manage, handle, transport, store, and properly land apply AFO waste in a manner that meets or exceeds NRCS technical standards and guidelines, manage animal mortality in a manner that

meets or exceeds ADAI requirements, prevents discharges, and ensures protection of groundwater and surface water quality in accordance with the requirements of this Chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto. The CAWV is responsible, in cooperation with the AFO owner/operator generating the waste/wastewater or land owner(s) receiving the waste/wastewater, for ensuring the suitability of each site prior to applying waste/wastewater, including but not limited to, proper timing of waste/wastewater application, proper calibration of equipment, ensuring that required waste/wastewater characterization and soil testing have been properly performed, ensuring that required inspections are properly performed, ensuring that required sampling of any discharges are properly performed, and ensuring that the land owner(s) or others receiving the waste/wastewater are informed of the requirements of this Chapter.

(p) "Chronic and Catastrophic Rainfall" means precipitation events which may result in an overflow of the required retention structure as described in 40 CFR Part 412. Catastrophic rainfall conditions would mean any single event which would equal or exceed the volume of the 25-year, 24-hour storm event. Catastrophic conditions could also include tornadoes, hurricanes or other catastrophic conditions which could cause overflow due to winds or mechanical damage. Chronic rainfall would be that series of wet weather conditions which would not provide opportunity for dewatering and which would equal or exceed the volume of the comparable 25-year, 24-hour storm event.

(q) "Commission" means the Alabama Environmental Management Commission (AEMC).

(r) "Concentrated Animal Feeding Operation" (CAFO) means an animal feeding operation (AFO) as generally described in 40 CFR 122.23 Appendix B, 40 CFR 122.23(c), and defined in Rule 335-6-7-.10. For purposes of this Chapter, an AFO, regardless of size or number of animals, that has experienced a point source discharge after April 1, 1999 is considered to be included in this definition.

(s) "Construction" means any land disturbance associated with or the result of building, excavation, digging, land clearing, grubbing, placement of fill, grading, blasting, reclamation, or other activity which in any way disturbs, changes, or modifies the ground surface, ground profile or topography, or materials stored or processed above ground, including right-of-ways (ROWs) and associated areas, but excluding mining. Construction also means that the owner or operator has begun, or caused to begin as part of a continuous or phased on-site construction program, (1) any placement, assembly, or installation of facilities or equipment; or (2) significant site preparation work including, but not limited to, clearing, excavation, or removal of existing buildings, structures, or facilities which is necessary for the placement, assembly, or installation of new source facilities or equipment; or (3) entered into a binding contractual obligation for the purpose of placement, assembly, or installation of facilities or equipment which are intended

to be used in its operation within a reasonable time. Options to purchase or contracts which can be terminated or modified without substantial loss, and contracts for feasibility, engineering, and design studies do not constitute a contractual obligation under this paragraph.

(t) "Control Facility" means any system used for the retention of all wastes on the premises until their ultimate disposal. This includes the retention of manure, liquid waste, dead animals, and runoff from the feedlot or stable area.

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

(v) "Director" means the Director of the Alabama Department of Environmental Management or his authorized representative or designee.

(w) "Discharge" means "the addition, introduction, leaking, spilling or emitting of any sewage, industrial waste, pollutant or other waste into waters of the State", Code of Ala. 1975, § 22-22-1(b)(9), as amended.

(x) "Freeboard" means the minimum elevation of the top of the settled embankment above the maximum design water surface in a lagoon or waste storage pond/sump to provide a margin of safety.

(y) "Groundwater" means water below the land surface in a zone of saturation.

(z) "Hydrologic Connection" means the interflow and exchange between surface impoundments or containment structures and groundwater or surface water through an underground corridor or pathway. In the context of this Chapter, the purpose of prevention/reduction of hydrologic connection is to prevent/reduce groundwater flow contact resulting in the transfer of pollutants from an AFO into groundwater or surface waters.

(aa) "Intermittent Watercourse" means, for the purposes of the Chapter, a watercourse that is represented by a dashed blue line on the most recent U.S.G.S. topographic map, and that flows only at certain times of the year, receiving water from springs or surface sources, and does not flow continuously when water losses from evaporation or seepage exceed available stream flow.

(bb) "Land Application" means the removal of wastewater and/or waste solids from a control facility and distribution to, or incorporation into, the soil mantle at agronomic rates as a fertilizer on actively growing crops for disposal purposes which meets or exceeds NRCS technical standards and guidelines.

(cc) "Liner" means any barrier in the form of a clay soil layer, concrete, synthetic membrane or blanket, that meets or exceeds NRCS technical standards and

guidelines properly installed to effectively prevent a hydrologic connection between liquids contained in lagoons, pits, ponds, sumps, and other retention structures to waters of the State.

(dd) "Liquid Animal Waste Management System" means any system that is used for the collection, storage, treatment, handling, transport, distribution or disposal of animal waste in liquid form generated by an AFO as determined by NRCS or the Department.

(ee) "Maximum Extent Practicable" (MEP) means full implementation and regular maintenance of available technology to meet or exceed NRCS technical standards and guidelines to prevent discharges and ensure protection of groundwater and surface water quality, and if necessary, additional full implementation and regular maintenance of best available technology (BAT) to meet or exceed CWA and AWPCA technical standards and guidelines to the level necessary to prevent discharges and to ensure protection of groundwater and surface water quality.

(ff) "NPDES" means the National Pollutant Discharge Elimination System permitting system for the control of and discharge of pollutants as set forth in 33 U.S.C. § 1342 and regulations promulgated pursuant thereto, as administered by the Department in the State of Alabama.

(gg) "NRCS" means the Natural Resources Conservation Service, an agency within the U.S. Department of Agriculture.

(hh) "Ordinary High Water Mark" - as determined by U.S. Army Corps of Engineers guidelines [40 CFR, No. 144, Part 209.120(d)(2)(ii)(a)] - means with respect to inland surface waters the line on the shore established by analysis of all daily high waters. It is established as that point on the shore that is inundated 25% of the time, and is derived by a flow-duration curve for the particular water body that is based on available water stage data. It may also be estimated by erosion or easily recognized characteristics such as the line on the shore established by the fluctuation of water and indicated by physical characteristics such as a clear, natural line impressed on the bank, shelving, changes in the character of the soil, destruction of terrestrial vegetation or its inability to grow, the presence of vegetative litter and debris, or other appropriate means that consider the characteristics of the surrounding areas.

(ii) "Operator" means any person in control of, or having responsibility for, the daily operation of an AFO or any person who treats and discharges wastewater or in the absence of treatment, the person who generates and/or discharges wastewater, sludge, or storm water.

(jj) "OAW" means Outstanding Alabama Water as defined in Chapter 335-6-10.

(kk) "ONRW" means Outstanding National Resource Water as defined in Chapter 335-6-10.

(ll) "Park" means an area of land owned or controlled by a governmental body through a permanent easement that is specifically set aside for public use (e.g. a public cemetery, land set aside for public access within a municipality maintained for recreational or ornamental purposes, a landscaped city square, a large tract of rural land kept in its natural state and reserved for the enjoyment and recreation of public visitors, a State or federal wilderness or dedicated monument area, a game preserve, a stadium or an enclosed playing field, a monument plaza, etc.)

(mm) "Perennial Non-Headwater Watercourse" means, for the purposes of this Chapter, that portion of a water of the State in a well-defined channel that is represented by a solid blue line on the most recent U.S.G.S. topographic map and with a drainage watershed equal to or greater than 5.0 square miles (3,200 acres).

(nn) "Person" means any and all persons, natural or artificial, including, but not limited to, any individual, partner, 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.

(oo) "Professional Engineer" (PE) means a person who by reason of his special knowledge of the mathematical and physical sciences and the principles and methods of engineering analysis and design, acquired by professional education and/or practical experience, is qualified to practice engineering according to the provisions of Code of Ala. 1975, §§ 34-11-1 through 34-11-37, as amended, and is presently registered by the Board of Registration for Professional Engineers and Land Surveyors.

(pp) "Professional Geologist" (PG) means a person who by reason of his special knowledge of the geological sciences and the principles and methods of geologic analysis and investigation, acquired by professional education and/or practical experience, is qualified to practice geology according to the provisions of Code of Ala. 1975, §§ 34-41-1 through 34-41-24, as amended, and is presently licensed by the Board of Licensure for Professional Geologists. The professional practice of geology shall mean the performance of geological service or work, including, but not limited to, consultation, geological investigation, surveys, evaluations, planning, mapping, or review of geological work related to the public practice of geology, or both, in which the performance is related to the public welfare or safeguarding of life, health, property, and the environment except as otherwise specifically provided or allowed by Alabama law.

(qq) "PWS" means Public Water Supply as defined in Chapter 335-6-10.

(rr) "Qualified Credentialed Professional" (QCP) means any staff member of the Department designated by the Director, a PE registered in the State of Alabama, an NRCS representative, an NRCS approved professional, or other qualified professional or professional designation acceptable to the Department, who can document proven training and experience in design, implementation, and inspection of comprehensive animal waste, waste product, and dead animal disposal management practices and system plans, including land application practices that meet or exceed NRCS technical standards and guidelines and the requirements of this Chapter as may be demonstrated by state registration, credential, professional certification, relevant experience and continuing education, or completion of accredited university programs, acceptable to the Department, that enable the individual to make sound professional judgments regarding animal waste management practices. The registrant or professional should contact the Department with any questions or comments regarding designation as a QCP. The QCP must be in good standing with the authority granting the registration or designation. The QCP must be familiar with current industry standards and be able to certify that effective management strategies have been properly implemented and regularly maintained according to good engineering practices and the requirements of this Chapter. Pursuant to Chapter 335-6-3 a PE registered in the State of Alabama must certify the design and construction of structural practices such as a Spill Prevention Control and Countermeasures (SPCC) plan containment structures, embankments, dams, dikes, berms, ditches, lagoon construction, etc. Pursuant to Code of Ala. 1975, §§ 34-41-1 to 34-41-24, a PG must perform and certify certain geological services or work.

(ss) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of pollutants from an AFO which has the potential to discharge into groundwater or surface water.

(tt) "Retention Facility" or "Retention Structure" means all collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds, sumps, and lagoons used to store and/or treat wastes, wastewaters and manure.

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

(vv) "Storm-Water Or Wastewater Collection/Drainage System" means piping, pumps, ditches, swales, concrete conveyances, conduits, and any other structure or equipment used to collect and transport the flow of surface water run-off or wastewater resulting from precipitation or other sources, or wastewater to and

from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

(ww) "Surface Impoundment" is a natural topographic depression, man-made excavation, or diked area generally formed primarily of compacted earthen materials (although it may be lined with man-made materials) designed and constructed to prevent discharges to surface water and groundwater.

(xx) "Tank" is a stationary device designed to contain an accumulation of animal wastes, fuels, or chemicals, and constructed of non-earthen materials (e.g., concrete, steel, plastic) that provide structural support.

(yy) "Toxic Pollutants" means pollutants and combination of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organisms, either directly from the environment or indirectly through food chains, will, on the basis of information available to the Department or Director cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, including malfunctions in reproduction, or physical deformations, in such organisms or their offspring. This shall include but not be limited to pollutants listed as toxic pursuant to 33 U.S.C. § 1317(a)(1), as amended.

(zz) "Trade Secret" (pursuant to Rule 335-6-6-.07) includes but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound or procedure, as well as production data or compilation of information, financial and marketing data, which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not have the information.

(aaa) "25-Year, 24-Hour Rainfall Event" means the maximum 24-hour precipitation event with a probable recurrence interval of once in 25 years, as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas, as amended.

(bbb) "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, failure to fully implement and regularly maintain effective management practices that meet or exceed NRCS technical standards and guidelines and Department requirements, or careless or improper operation.

(ccc) "Waste" means Agricultural Waste including, but not limited to chemicals, sediment, trash, debris, garbage, etc. generated at an AFO.

(ddd) "Waste Management System Plan" (WMSP) means a comprehensive plan which meets or exceeds USDA Natural Resources Conservation Service (NRCS) technical standards and guidelines, NRCS Comprehensive Nutrient Management Plan (CNMP) guidelines, the requirements of this Chapter, and applicable requirements of the CWA and regulations promulgated pursuant thereto, that is prepared by a QCP approved by the Department. The plan shall detail management of the entire facility and associated areas which includes but is not limited to proper treatment, storage, handling, transport, and disposal/utilization of wastes, wastewater, wasteproduct, dead or diseased animals, general housekeeping BMPs, nutrient management, and land application of wastes. The nutrient management portion of the plan shall include an assessment of the land application site; a description of the land use, cropping sequence, and management of crops; nutrient budget which accounts for nitrogen and phosphorus use; timing of applications, buffer requirements, erosion, and runoff control practices; and if the site is not owned by the registrant, a signed lease to use the land, a detailed bill of sale for the waste, a valid contract with a CAWV, or a signed written land use agreement. The site assessment shall include a soil map, hydrologic soil group(s), permeability of the upper ten inches of soil, and location of streams, sinkholes, and wells. The nutrient budget shall account for all available nutrients applied on the site and shall include soil test results, sources of nutrients, and application rates. A detailed map of the application site showing location of fields, buffer zones, streams, wells, sinkholes, and other pertinent information will be part of the plan.

(eee) "Wastewater" means liquid Agricultural Waste and any liquid waste or water generated directly or indirectly in the operation of an AFO (such as spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, lagoons, manure pits, direct contact, swimming, washing, or spray cooling of animals; and dust control) and any precipitation (rain or snow) which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g. milk, eggs).

(fff) "Wastewater Treatment Tank" means a tank that is designated to receive and treat an influent wastewater through physical, chemical, or biological methods.

(ggg) "Waters Of The State" means "all waters of any river, stream, watercourse, pond, lake, coastal, groundwater 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", Code of Ala. 1975, § 22-22-1(b)(2), as amended. Waters "include all

navigable waters" as defined in 33 U.S.C. § 1362(7), as amended, which are within the State of Alabama.

(hhh) "Well" means a hole drilled, dug, driven, board, jetted, or otherwise constructed for water production or water supply.

335-6-7-.03 Applicability.

(1) The provisions of this Chapter are applicable to the construction, operation, maintenance, repair, and closure of cattle, swine, poultry, fowl, dairy, stockyard, auction or buyer yards, farms, facilities, or operations, and any other AFOs or facilities with wild or domesticated animals designated by the Director or his designee, and their associated waste management and land application systems located wholly or partially within the State of Alabama.

(2) Unless specifically excluded in writing by the Director from the administrative requirements of this Chapter pursuant to Rule 335-6-7-.07(5), and in accordance with applicable requirements of the CWA and NPDES program, the requirements of this Chapter are applicable to all new and existing AFOs in the State.

(3) Any AFO may be required to register under this Chapter or be required to obtain an NPDES Individual permit or appropriate General permit authorization in writing by the Director or his designee for reasons that include but are not limited to the location of the facility, size of the facility, discharge status of the facility, and compliance history of the owner/operator.

(4) Unless required in writing by the Director, AFOs that are not considered CAFOs pursuant to Rule 335-6-7-.10 are not required to apply for and obtain Registration from the Department as required by this Chapter.

(5) Chapter Modification And Public Participation

(a) The Director or his designee shall cause to be published a Public Notice with a comment period of not less than 30 days to solicit public participation and comment and to schedule a Public Hearing according to procedures described in Rule 335-6-6-.21 regarding the content of, implementation of, and compliance with provisions herein, prior to the completion of the first five year term beginning with the effective date of this Chapter, and at least once every five years after the Public Notice referenced above and each subsequent Public Notice is held. After review of comments received during the public participation process, and no later than 120 days after the close of the public comment period, the Director or his designee shall prepare a written Response To Comments addressing comments received during the public participation process and shall make a determination in writing regarding the status of this Chapter and of the need, if any, to initiate procedures pursuant to Code of Ala. 1975, §§ 41-22-1 through 41-22-27, as amended, to modify this Chapter to ensure that the

requirements of this Chapter are in accordance with the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto. Where the Director or his designee has initiated procedures to modify this Chapter as set forth in this Rule, the Director or his designee shall provide the proposed modifications to the Regional Administrator, United States Environmental Protection Agency, for comment, objection, or recommendation, for a period of time not less than 90 days.

(b) The Director or his designee shall cause to be published a Public Notice with a comment period of not less than 30 days according to procedures described in Rule 335-6-6-.21 to inform the public regarding the Response To Comments and the Director's or his designee's determination regarding the need, if any, to initiate rulemaking procedures to modify this Chapter as described in (a) above. The Public Notice shall include information to inform the public how to obtain in writing the procedures for the public to petition the Department to initiate procedures in accordance with Chapter 335-2-2 to modify this Chapter if the Director or his designee determines, after consideration of comments or other information received during the public participation process, that modification of this Chapter by the Department is not necessary.

(c) Where the Director or his designee has initiated the procedures within the prescribed periods set forth in paragraph (a), the provisions of this Chapter continue in force until modified or repealed pursuant to applicable provisions of Code of Ala. 1975, §§ 41-22-1 through 41-22-27, as amended. Pursuant to paragraph (b), provisions proposed to be modified or repealed shall continue in force until the effective date of any modification or repeal and any proposed new provision shall apply commencing with the effective date of the new provision.

335-6-7-.04 General Provisions.

(1) All AFOs, regardless of size or registration status, must maintain adequate records to document compliance with this Chapter and shall fully implement and regularly maintain comprehensive waste management system Best Management Practices (BMPs) to the maximum extent practicable which meet or exceed NRCS technical standards and guidelines to prevent and minimize discharges of pollution during construction and operation. Appropriate pollution abatement/prevention facilities and structural and nonstructural BMPs, or Department approved equivalents, must be fully implemented prior to and concurrent with commencement of regulated activities and regularly maintained during operation as needed at the facility to meet or exceed NRCS technical standards and guidelines and ADEM requirements until closure is approved by the Director or his designee. Failure to fully implement and regularly maintain BMPs for the protection of water quality and minimization of odors to the maximum extent practicable may subject the owner/operator of the AFO to appropriate enforcement action.

(2) All AFO owners/operators shall regularly inspect and evaluate their facility(s) to ensure compliance with provisions of this Chapter. Each owner/operator of an AFO that

is also a defined CAFO or that may meet the criteria for designation as a CAFO under this Chapter shall notify the Director or his designee of their status and register. Each CAFO owner/operator shall implement and maintain an approved WMSP and submit formal certification/evaluation as required by this Chapter. Each owner/operator of an AFO that has a question or is unsure regarding their status under this Chapter shall contact the Director or his designee for clarification of their status.

(3) Except as provided otherwise by this Chapter and approved by the Director or his designee in writing, after September 30, 1999, continued operation of CAFO facilities existing after April 1, 1999 who have not submitted a complete and correct application or Notice of Registration (NOR) for coverage under a valid NPDES Registration, General permit (if issued), or Individual permit, are prohibited. Except as provided otherwise by this Chapter and approved by the Director or his designee in writing, after April 1, 1999, construction of, or commencement of regulated activity, at proposed CAFO facilities who have not submitted a complete and correct application or NOR and have not been granted coverage under a valid NPDES Registration, General permit, or Individual permit, and by the Director or his designee, is prohibited.

(4) Construction and operation of, and discharges from, CAFO facilities who have had coverage terminated or have been denied coverage under a valid NPDES Registration, General permit, or Individual permit, are prohibited.

(5) As used in this Chapter:

(a) Words in the masculine gender also include the feminine and neuter genders; and

(b) Words in the singular include the plural and words in the plural include the singular; and

(c) Words that are capitalized include non-capitalized and non-capitalized words include capitalized.

(6) In any case where rule(s) may appear to be in conflict, allow different actions, or allow a choice of actions, the requirements of the rule(s) are presumed to complement and supplement each other. For buffers, the more stringent applicable buffer requirement shall apply.

335-6-7-.06 Compliance With NPDES Rules.

(1) Approval of Registration under this Chapter constitutes NPDES permit coverage as provided in Chapter 335-6-6. Unless specifically provided otherwise by this Chapter, Registrants shall comply with all provisions of this Chapter and the NPDES permit program as described in Chapter 335-6-6.

(2) Any noncompliance with this Chapter constitutes a violation of this Chapter and NPDES rules and may constitute a violation of the CWA and the AWPCA and is grounds for enforcement action and/or for requiring the owner/operator or registrant to apply for and obtain an Individual NPDES permit.

(3) It shall not be a defense for an owner/operator in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this Chapter. Upon reduction, loss, or failure of the treatment facility, the owner/operator shall, to the extent necessary to maintain compliance with this Chapter, control production or discharge or both until the facility is restored or an effective alternative method of treatment is provided.

(4) The owner/operator shall take all reasonable steps to prevent and minimize to the maximum extent practicable any discharge in violation of this Chapter which has a reasonable likelihood of adversely affecting human health or the environment and/or the groundwater or surface water receiving the discharge(s).

(5) In accordance with the provisions of 40 CFR 123.1(i), states may adopt and enforce Rules which are more stringent than those required for NPDES delegation, or operate a program with a greater scope of coverage than required by federal law and an owner/operator shall comply with such State Rules. This includes any requirements to prohibit discharge from all AFOs regardless of the number of animals being confined, stabled, or concentrated and fed. This Chapter may be both greater in scope and more stringent than required by federal law. Enforcement authority for conditions in this Chapter which constitute greater scope of coverage than required by Federal law are not part of the federally approved NPDES program and therefore are not subject to EPA oversight.

(6) To ensure compliance with the requirements of this Chapter, an AFO/CAFO owner/operator has the option to apply for and obtain coverage under an Individual NPDES permit, considering the requirements of Rule 335-6-7-.07(3), including payment of required application fees, as provided in 40 CFR 122.28(b)(2)(i), and as pursuant to the requirements of Chapter 335-6-6. All requirements of this Chapter shall apply to the AFO/CAFO owner/operator until issuance of the Individual NPDES permit. The AFO/CAFO owner/operator shall be considered in violation of this Chapter, the AWPCA, and NPDES requirements each day that the operation is not in compliance with the requirements of this Chapter until the required complete and correct Individual permit application is submitted and Individual permit coverage is issued by the Department.

335-6-7-.07 Requirement To Apply For And Obtain Coverage Under A General Or Individual NPDES Permit, Termination And/Or Denial Of Registration.

(1) The Director may require any CAFO required to be registered under this Chapter to apply for and obtain an Individual NPDES permit as provided in 40 CFR 122.28(b)(2)(i) and pursuant to Chapter 335-6-6. The Director or his designee will notify the owner/operator in writing that an Individual permit application to include the

appropriate application fee is required. If an owner/operator fails to submit a complete and correct Individual NPDES application with applicable application fee as required by Chapter 335-1-6 or by the deadline specified by the Director or his designee, then any Registration granted to the owner/operator is automatically terminated at the end of the day specified for application submittal and the owner/operator may be subject to enforcement action. All requirements of this Chapter still apply to the AFO/CAFO owner/operator. The owner/operator shall be considered in violation of this Chapter, the AWPCA, and NPDES requirements each day until the required complete and correct Individual permit application is submitted and Individual permit coverage is issued by the Department.

(2) When an Individual NPDES permit or General permit (if issued) coverage is issued to an owner/operator subject to this Chapter, the applicability of this Chapter to the registrant is automatically terminated on the effective date of the Individual/General permit coverage. When an Individual NPDES permit or General permit coverage is terminated or an application is denied to an owner/operator otherwise subject to this Chapter, the owner/operator continues to be subject to the requirements of this Chapter on and after the date of such termination or denial, unless otherwise specified in writing by the Director or his designee.

(3) Individual NPDES permits or General permit coverage issued to AFO/CAFO facilities shall contain at least the same design and operational considerations as described in this Chapter and/or an affirmative demonstration of new and/or innovative technology or management measures acceptable to the Director or his designee to ensure an equivalent level of environmental quality as required by this Chapter. When the facility obtains coverage under an Individual permit or General permit (if issued) reflecting current regulatory requirements, any previously approved Registration will be considered administratively voided and superseded.

(4) Initial construction (that exceeds 1 acre) of an AFO that is not registered under this Chapter, or additional construction (that exceeds 1 acre) at an existing AFO that is not registered under this Chapter shall obtain coverage under an NPDES construction Notification, Registration, General permit, or Individual permit prior to commencement of new or increased construction, land disturbance, or associated regulated activity, unless exempted on a programmatic or categorical basis from this requirement in writing by the Director or his designee.

(5) Termination Or Denial Of Registrations

(a) The following may be causes for terminating a Registration during its term, for denying a Registration issuance application, or denying a Registration reissuance application:

1. substantial noncompliance by the registrant or applicant with any condition of the Registration or the requirements of this Chapter;

2. the registrant's or applicant's failure in the Registration application or during the Registration issuance or reissuance process to disclose fully all relevant facts, or the registrant's or applicant's failure to disclose all relevant facts or the registrant's or applicant's misrepresentation of any relevant facts, at any time;
3. a change in any condition that results in either a temporary or a permanent reduction or elimination of any discharge controlled by the Registration [for example, facility closure or termination of a discharge by connection to a publicly/privately owned treatment works (POTW)];
4. the registrant's or applicant's failure to submit a complete Registration, including any additional information requested by the Director or his designee and appropriate registration fees;
5. the registrant's or applicant's history of substantial noncompliance if determined applicable by the Director; or
6. any other relevant factors the Director determines to be appropriate.

(b) If cause exists for denial or termination of Registration under this Rule, the Director may determine that termination or denial of Registration is appropriate.

(c) If the Director determines that a Registration that results in compliance with applicable water quality standards could not be issued or, if issued, could not be complied with, such Registration shall be terminated or denied.

(d) Any applicant or registrant whose Registration is denied or terminated pursuant to the provisions of this Rule shall comply with the AWPCA and applicable requirements of Division 335-6 and may apply for coverage under an Individual NPDES permit pursuant to the provisions of Chapter 335-6-6.

335-6-7-.09 Notice Of Registration (NOR).

(1) Unless exempted by the Director or his designee in writing, the Notice of Registration (NOR) shall include the following information:

- (a) Facility owner's name, address, and telephone number;
- (b) Operator's name, address, and telephone number, if different from owner;
- (c) Facility name, contact person, address, telephone number, directions to the facility, and Township, Range, and Section(s) of the facility and each land application site, Latitude and Longitude of the front access gate of the facility, and Latitude and Longitude of each lagoon or liquid waste storage/treatment structure;

- (d) Methods proposed to be or currently being used for processing wastes/wastewater (for example, dry storage facility, flushing to holding ponds/sumps, followed by land application, etc.);
- (e) Name of receiving water(s) according to USGS 7.5-minute topographic map to which wastewaters have discharged, are discharging, or could potentially be discharged;
- (f) The type(s) and highest number of each animal type that have been in open confinement and/or housed under roof for the previous 12 months, and the anticipated type(s) and highest number of each animal type that are planned/expected to be in open confinement and/or housed under roof for the next 12 months;
- (g) If different from the owner/operator, the name, address, telephone number, and contact person for the entity who owns or has an ownership interest in the animals present at the facility, and animal feed or chemicals stored at the facility;
- (h) If flowing surface waters or waters of the State (e.g. streams, rivers, canals) have the potential to come into direct contact with animals confined or concentrated in the facility, describe measures to be utilized to avoid direct animal contact;
- (i) If a corporation, or partnership, a statement that the entity is registered with or has notified the Office of the Secretary of State of Alabama in writing of the intent to conduct business in Alabama;
- (j) Listing of any partners or other owners;
- (k) Listing of any past or current permit violations, Registration violations, NPDES Rules violations, and violations of the AWPCA and CWA;
- (l) Proposed schedule for preparation and implementation of approved WMSP and for submittal of appropriate certification/evaluation of implementation of the WMSP that is certified by a QCP;
- (m) Other relevant information that may be requested by the Director or his designee;
- (n) Date of last annual inspection and name of the QCP who performed the inspection, date of last five-year inspection and the name of the PE who performed the inspection or directed/supervised the QCP who performed the inspection, and the name of the QCP who performed the inspection under the direct supervision of the PE, and a summary of any deficiencies observed and corrective action taken as a result of the inspection(s);

(o) All NORs for coverage under this Chapter must be signed in accordance with the provisions of 40 CFR 122.22 and Rule 335-6-7-.09 (9), (11), and (12).

(p) Any additional plans, applicable information, or certifications required by this Chapter or the Director or his designee.

(2) The NOR must be delivered or mailed by certified mail to the Department or other agency as may be designated by the Director.

(3) Coverage provided by registration under this Chapter will expire 365 days from issuance unless the owner/operator submits a complete and correct NOR requesting continued coverage and continued coverage is approved by the Director. However, all requirements of this Chapter continue in effect regardless of the owner/operator's registration status.

(4) In accordance with Chapter 335-1-6 (Fee System) and Rule 335-6-7-.12, a registration fee must accompany the NOR. An NOR shall not be considered complete and correct until submittal of the required fee is verified by the Department. Failure to remit the required fee is grounds for the Director or his designee to initiate enforcement action and to deny Registration under this Chapter and require the owner/operator to apply for an Individual NPDES permit pursuant to the provisions of Rule 335-6-7-.07(5). Subsequent annual registration fees are due with the submittal of any NOR requesting continued coverage or if billed by the Department in accordance with Chapter 335-1-6.

(5) An owner/operator who registers under this Chapter must provide a complete and correct NOR to the Department or other agency approved by the Department on such form or forms, to include complete and correct information, as the Department may require. An NOR shall be considered complete and correct as determined by the Director or his designee.

(6) Unless notified in writing by the Director or his designee within 45 days after written verification from the Department of receipt of a complete and correct NOR, including the appropriate registration fee, WMSP if required, and applicable QCP certifications, that the NOR is incomplete, that additional time is needed by the Department to properly process the NOR, or that the NOR has been denied, owners/operators are authorized to construct and operate the facility on an interim basis provided the facility remains in full compliance with all provisions of this Chapter. Subsequent to the filing of a complete Registration, the Department shall determine whether to formally approve or deny the request for Registration. In the event the Registration is formally approved, any interested party, as provided in Code of Ala. 1975, § 22-22A-7(c), as amended, may appeal the Registration approval to the Environmental Management Commission. In the event Registration is denied, the Department shall provide to the applicant a written statement setting out the basis for the denial. The applicant may appeal the denial in accordance with Code of Ala. 1975, § 22-22A-7(c), as amended.

(7) Registration Modification

(a) Registrants shall notify the Department in writing whenever there is a change in operational procedures of the registered facility. When the operational situation changes, an owner/operator covered under this Chapter shall submit a revised NOR, including any applicable fee for a Major modification, describing the operational changes at the facility, including any supporting documentation required by the Department.

(b) Major Modification. The registrant must request modification of the Registration from the Department in writing and submit the appropriate registration fee at least 15 days prior to any change in ownership or operational procedures of the registered facility, including, but not limited to, the following:

1. A change of ownership or name of registrant;
2. A change in operational control of the facility;
3. Increase in the number of confined or concentrated animals at any time which is sufficient to place the facility in a higher animal unit fee category as provided in Chapter 335-1-6 - Fee Schedule D, Water Permits/Registration, CAFO.
4. Significant change in waste treatment, handling or disposal as determined by the Director or his designee.

(c) Minor Modification. If required by the Director or his designee, the registrant shall notify the Department in writing of any minor modification of the Registration. The registrant shall document no later than 30 days after any minor change that the WMSP has been properly updated regarding any minor change in operational procedures of the registered facility, including, but not limited to, the following:

1. A change in approved land application sites.
2. Non-significant change in waste treatment, handling or disposal as determined by the Director or his designee.
3. Entering into or canceling a written contract with a CAWV.

(d) The Department may in its discretion require the owner/operator to provide construction plans and specifications, amended plans of operation or any other information required by this Chapter.

(8) In the event of any change in control or ownership of facilities covered by this Chapter, the registrant shall, by certified mail, signed receipt, or other method approved

by the Department, notify at least 15 days prior to the change in ownership, with copy to the Department, the succeeding owner/operator or controller of the existence of this Chapter and the need to update the facility's Registration.

(9) All NORs shall be signed as follows:

(a) For a corporation: By a responsible corporate officer. For the purposes of this Chapter, a responsible corporate officer means a principal executive officer at the level of vice president or above of the corporation in charge of a principal business function or who performs similar policy or decision making functions for the corporation.

(b) For a partnership or sole proprietorship: By a general partner or the proprietor, respectively.

(c) For a Limited Liability Corporation (LLC): By any controlling member.

(d) For a municipality, State, federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this paragraph, a principal executive officer of a federal agency includes the chief executive officer of the agency or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(10) All reports required by this Chapter and other information required by the Director or his designee shall be signed by a person described above or by a duly authorized representative of that person, and where required by this Chapter, a QCP. A person is a duly authorized representative only if:

(a) The authorization is made in writing and signed by a responsible corporate official; and

(b) The authorization specifies either an individual or a person having responsibility for the overall operation of the regulated facility or activity, such as the position of facility manager, superintendent, or position of equivalent responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position); and

(c) The written authorization is submitted to and approved by the Director or his designee.

(11) If a signatory authorization under this Chapter is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new signatory authorization satisfying the above requirements must be submitted to the Director, prior to or with any reports, information, or applications to be signed by an authorized individual.

(12) Any person signing a document required by this Chapter shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations".

335-6-7-.10 Registration Requirements For Concentrated Animal Feeding Operations (CAFOs).

(1) After April 1, 1999, no new CAFO shall be constructed or commence operation unless the owner/operator has first submitted a complete and correct Notice of Registration (NOR) to the Department or other governmental agency acceptable to the Department, and the Registration has been approved by the Department.

(2) After September 30, 1999, no CAFO existing after April 1, 1999 shall continue operation unless the owner/operator has first submitted a complete and correct NOR to the Department or other governmental agency acceptable to the Department.

(3) After April 1, 1999, no existing AFO shall expand or modify operations such that the AFO would become a defined CAFO or would be designated as a CAFO, and no existing CAFO shall expand or modify operations, unless the owner/operator has first submitted a complete and correct NOR to the Department or other governmental agency acceptable to the Department, and the Registration has been approved by the Department.

(4) For purposes of this Chapter, a CAFO is an AFO which is subject to the NPDES permitting requirements of 40 CFR 122.23 and as generally described by EPA's Guide Manual On NPDES Regulations For Concentrated Animal Feeding Operations (CAFOs) (December 1995), as amended, meeting any of the following criteria:

(a) An AFO with more than the following number(s) and type(s) of animals:

1. 1,000 slaughter or feeder cattle,
2. 700 mature dairy cattle (whether milked or dry cows),
3. 2,500 swine each weighing equal to or greater than 25 kilograms (approximately 55 pounds),
4. 4,000 swine each weighing equal to or greater than 7 kilograms and less than 25 kilograms (approximately between 15 pounds and 55 pounds),

5. 10,000 swine each weighing less than 7 kilograms (approximately 15 pounds or less),
6. 6,250 goats,
7. 500 horses,
8. 10,000 sheep or lambs,
9. 55,000 turkeys,
10. 125,000 laying hens, broilers, or other poultry,
11. 6,250 emus,
12. 60,000 rabbits,
13. 5,000 ducks, or
14. 1,000 animal units of any other type/size animal as generally described in 40 CFR 122, Appendix B, or as determined by the Director;
or

(b) An AFO with more than the following number(s) and type(s) of animals and where there is a point source or nonpoint source discharge or a point source or nonpoint source discharge has occurred after April 1, 1999, of pollutants into groundwater or surface waters of the State through a man-made ditch, flushing system, other similar man-made devices, or improper handling, storage, transport, distribution, or land application of wastes:

1. 300 slaughter or feeder cattle,
2. 200 mature dairy cattle (whether milked or dry cows),
3. 750 swine each weighing equal to or greater than 25 kilograms (approximately 55 pounds),
4. 1,200 swine each weighing equal to or greater than 7 kilograms and less than 25 kilograms (approximately between 15 pounds and 55 pounds),
5. 3,000 swine each weighing less than 7 kilograms (approximately 15 pounds or less),
6. 1,875 goats,

7. 150 horses,
8. 3,000 sheep or lambs,
9. 16,000 turkeys,
10. 37,500 laying hens, broilers, or other poultry,
11. 1,875 emus,
12. 18,000 rabbits,
13. 1,500 ducks, or
14. 300 animal units of any other type/size animal as generally described in 40 CFR 122, Appendix B, or as determined by the Director.

(c) As determined necessary by the Director, a new or existing AFO, 100 animal units or larger, which is located in a localized watershed or defined stream segment that has been formally designated by the Director and publicly noticed by the Department as a priority, threatened, or water quality limited/impaired watershed due to documented, monitored pollutant concentrations which may be caused by or contributed to by actual or potential point or nonpoint source discharges from an AFO. The AFO shall remain registered until termination of the Registration is approved by the Director or his designee.

(d) An AFO of any size which has been designated by the Director following an on-site inspection by Department representatives as a significant contributor or potential significant contributor of pollution, or has caused or contributed to a violation of an applicable Water Quality Standard. An AFO that fails to fully implement and regularly maintain effective BMPs after notification from the Department shall be considered a significant contributor, shall be considered to have discharged pursuant to Rule 335-6-7-.10(4)(e), and shall be subject to enforcement action by the Department.

(e) An active AFO or inactive AFO that has not been properly closed according to the requirements of this Chapter of any size which has experienced or experiences a discharge to groundwater or surface water of the State by lack of proper management, abandonment, negligence, by design, or for any other reason not authorized by this Chapter at any time after April 1, 1999.

(f) An AFO of any size which has experienced a discharge to groundwater or surface water of the State due to bypass or upset conditions as defined in Rule 335-6-7-.32 (3) or (4), which has not fully implemented and regularly maintained a WMSP and associated land application plan which meets or exceeds NRCS technical standards and guidelines at any time after April 1, 1999 or did not notify

the Department of an unpermitted discharge or the bypass or upset discharge as required by this Chapter or the AWPCA at any time after April 1, 1999.

(g) At any time after April 1, 1999, an AFO of any size with a liquid waste management system which has not fully implemented and regularly maintained a WMSP and associated land application plan which meets or exceeds NRCS technical standards and guidelines, as certified by NRCS personnel or a PE at the time of installation or as a result of a post-construction comprehensive inspection/evaluation. Unless determined otherwise by the Director or his designee, a facility is considered to have a liquid waste management system if liquid storage or treatment is used (flushing systems, lagoons, waste storage ponds, sumps, tanks, etc.), or if the waste is defined as liquid, slurry, or semi-solid according to American Society of Agricultural Engineers (ASAE) Standard S292.4, Section 2, Part 2.74, as amended.

(5) Animal units (AUs) for animals not specifically listed in this Chapter (e.g. nutria, other ratites, reptiles, brood cows, etc.), shall be determined on an individual basis by the Director or his designee considering the quantity and chemical characteristics of the waste using as a comparison listed animals that are similar.

(6) Unless approved by the Director or his designee in writing, a CAFO that discharges all of its stormwater runoff and wastewater to a sanitary sewer system which discharges to a water of the State in accordance with a valid NPDES or State Indirect Discharge (SID) permit is not eligible to obtain registration coverage under this Chapter.

(7) An owner/operator of an AFO that is not defined by Rule as a CAFO or is not designated as a CAFO by the Director, that has registered may request termination of Registration at any time from the Department. Voluntary Registration by an AFO that is not defined by Rule as a CAFO or is not designated as a CAFO by the Director is not considered to be a CAFO after approval of the voluntary registration termination provided the AFO owner/operator continues to comply with all applicable requirements of this Chapter. The request shall be in a form acceptable to the Department.

335-6-7-.13 Schedule Of Registration And Certification/Evaluation Of Approved Waste Management System Plan (WMSP).

(1) Owners/operators of CAFOs who intend to or are required to obtain coverage under this Chapter shall submit a Notice of Registration (NOR) to the Director or his designee in accordance with the following:

(a) Facilities existing after April 1, 1999 shall submit the complete and correct NOR no later than September 30, 1999, or as otherwise authorized by the Director or his designee in writing on a case-by-case basis.

(b) New or proposed facilities shall submit the NOR at least 30 days prior to the proposed beginning of construction of the facility and at least 45 days prior to the

proposed commencement of feeding operations at the facility and shall comply with the provisions of Rule 335-6-7-.09.

(c) AFOs not previously subject to registration requirements of this Chapter, but which intend to expand operations to more than the number and type of animals to be considered a CAFO, must submit a new NOR or, if currently registered a modified NOR, to the Director or his designee at least 30 days prior to the proposed beginning of construction of the expanded facilities and at least 45 days prior to the proposed commencement of feeding operations at the expanded facilities and shall comply with the provisions of Rule 335-6-7-.09.

(d) CAFOs subject to this Chapter may submit a NOR at any time after the dates specified above. However, the Director or his designee may take appropriate enforcement action for failure to submit a NOR as required by the Department in accordance with this Chapter.

(2) Owners/operators of AFOs defined or designated as CAFOs by the requirements of this Chapter who intend to, are required to, or have obtained NPDES permit coverage under this Chapter shall submit to the Department certification/evaluation by a QCP that the facility has been designed, constructed, or has been updated, and can reasonably be operated in accordance with an approved WMSP that meets or exceeds NRCS technical standards and guidelines and as required by this Chapter and the Director or his designee. The type, format, and content of the certification/evaluation required shall be determined by the Director or his designee considering facility construction, site conditions, operational history and any potential impacts to groundwater and surface waters of the state. Unless required otherwise in writing by the Director or his designee, the certification/evaluation shall be submitted by the earliest date specified according to the following schedule:

(a) After April 1, 1999, new or proposed CAFO facilities shall submit the required certification at least 15 days prior to the commencement of feeding operations at the new CAFO facility.

(b) Facilities existing after April 1, 1999 with a WMSP previously prepared by a QCP or an NRCS representative that met or exceeded NRCS technical standards and guidelines at the time it was implemented shall submit the required certification/evaluation no later than November 1, 1999.

(c) AFOs not previously subject to registration under this Chapter, but which intend to expand or modify operations to more than the number and type of animals to be considered a CAFO after April 1, 1999, must submit the required certification/evaluation at least 15 days prior to commencement of feeding operations at the expanded facilities.

(d) Existing facilities identified as a priority facility by the Director due to size, location, potential impacts to water quality, or other factors shall submit the

required certification/evaluation no later than 30 days after receiving written notification from the Director or his designee, unless an extension is granted in writing by the Director or his designee.

(e) Facilities existing after April 1, 1999 with point or nonpoint source discharges which may have caused since April 1, 1999, are causing, or have the potential to cause, as determined by the Director or his designee, a violation of a State Water Quality Standard pursuant to Chapter 335-6-10, shall submit the required certification/evaluation no later than November 1, 1999.

(f) Facilities existing as of April 1, 1999 where any point source discharge(s) have occurred after April 1, 1999 shall submit the required certification/evaluation no later than November 1, 1999.

(g) Facilities existing as of April 1, 1999 where any nonpoint source discharge(s) have occurred after April 1, 1999 shall submit the required certification/evaluation no later than November 1, 2000.

(h) Facilities existing after April 1, 1999 located in watersheds of water bodies listed on the Department's CWA Section 303(d) list of priority water quality limited streams as a result of agricultural impacts or pollutants directly related to animal agriculture shall submit the required certification/evaluation no later than November 1, 2001.

(i) Facilities existing after April 1, 1999 located in the watersheds of water bodies listed on the Department's CWA Section 305(b) list as being water quality impacted as a result of agricultural impacts or pollutants directly related to animal agriculture shall submit the required certification/evaluation no later than November 1, 2002.

(j) All remaining facilities existing after April 1, 1999 that are not required to submit certification/evaluation pursuant to (a) through (i) of this Rule and that have not previously submitted the required certification/evaluation shall submit the required certification/evaluation no later than November 1, 2003.

(k) Existing facilities located in a watershed designated by the Director pursuant to Rule 335-6-7-.10(4)(c) as a priority watershed shall submit the required certification/evaluation within ninety (90) days after public notice by the Department, unless an alternate schedule is approved in writing by the Director or his designee.

(l) Facilities existing after April 1, 1999, with an earthen storage or treatment facility for liquid waste which was constructed without documented technical assistance from a QCP according to NRCS technical standards and guidelines shall submit the required certification/evaluation to continue operation or implement an approved closure plan no later than November 1, 2000.

(3) The Director may modify (shorten or extend) any deadline required in this Rule in accordance with the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, for cause, to include but not be limited to, availability of adequate technical resources and funding. Failure to seek or obtain, or delay in seeking or obtaining, technical assistance or the services of a QCP in a timely manner for preparation, implementation, and certification/evaluation of a WMSP, may be considered by the Director or his designee when determining if deadline modification is warranted.

335-6-7-.14 Reporting And Record Keeping.

(1) AFO owners/operators shall cooperate fully with inspections, monitoring and testing conducted by the Department as well as requests for document submission, submission of engineering or technical data, and testing and monitoring performed by the owner/operator at the request of the Department.

(2) AFO owners/operators must keep all records required either:

(a) At the facility and be immediately available for inspection by the Department;
or

(b) At a readily available alternative site and be provided for inspection to the Director or his designee upon request.

(3) The registrant shall designate in writing as part of any Registration individual(s) responsible for inspections and record keeping.

(4) Incidents such as spills, or other discharges, along with information describing the pollution potential and quantity of the discharge, shall be documented and reported to the Director or his designee as required by this Chapter by all AFO owners/operators.

(5) CAFO facility inspections and maintenance activities shall be documented and reported as required by this Chapter and records must be kept on site or at a Department approved location for a minimum of three years and until after the next inspection and certification/evaluation of the facility and applicable records by a PE as required by Rule 335-6-7-.28.

(6) All reports required by this Chapter shall be submitted in a timely manner as required by this Chapter or as required by the Director or his designee. Failure to submit required reports may subject the AFO owner/operator to enforcement actions in accordance with the provisions of the AWPCA, as amended, and Rules promulgated thereunder.

(7) All discharge information and other data required to be maintained by the AFO owner/operator shall be made available to the Director or his designee upon request. Signed copies of monitoring reports shall be submitted to the Director or his designee if requested.

(8) AFO owners/operators shall retain copies of all records required by this Chapter for a period of at least three years from the date reported. This period may be extended by the Director at any time.

(9) Except for data determined to be confidential under 40 CFR Part 2, under Code of Ala. 1975, § 22-22-9(c), as amended, and under Rule 335-6-7-.16 all reports prepared and submitted in accordance with the terms of this Chapter shall be available for public inspection at the Department's Montgomery offices, or through appropriate alternative procedures implemented by the Department and the name and address of any applicant or registrant, name and location of the facility, NPDES applications or NORs, permits, registration, and effluent data shall not be considered confidential.

(10) The registrant shall document any planned physical alterations or additions to the registered facility. The AFO owner/operator must ensure that any change or facility expansion is in accordance with the provisions of this Chapter, and that an applicable Registration issuance or Registration modification is obtained and approved by the Director or his designee and a revised WMSP that meets or exceeds NRCS technical standards and guidelines is obtained and accepted by the Director or his designee, prior to any change or modification. Notwithstanding Departmental acceptance of the WMSP, additional/revised effective management practices shall be implemented as necessary by the AFO owner/operator that are sufficient to protect water quality and minimize the generation of odors to the maximum extend practicable.

(11) The registrant shall furnish to the Director or his designee any information which the Director may request to determine whether cause exists for modifying, revoking and requiring coverage under an Individual NPDES permit, or terminating the facility's Registration under this Chapter, or to determine compliance with this Chapter. The registrant shall also furnish to the Director or his designee, upon request, copies of records required to be kept by this Chapter.

(12) When the registrant becomes aware that it failed to submit any relevant facts or submitted incorrect information in the NOR or in any other report required by this Chapter, it shall promptly submit such facts or information to the Director.

(13) Except as required by Rule 335-6-7-.03, while an AFO that is not a defined or designated CAFO is not required to maintain or submit specific records unless required in writing by the Director, it is the responsibility of owners/operators of an AFO that may not be considered a CAFO requiring registration under this Chapter to maintain sufficient records that can document their status as a facility that has implemented best management practices that meet or exceed NRCS technical standards and guidelines, that has not discharged, or that is not otherwise required to register. Any records shall be made available to the Director or his designee upon request. Failure to record and keep adequate records documenting the operation of the AFO shall not be a defense to the Department determining that the operation is a CAFO requiring registration under Rule 335-6-7-.10.

335-6-7-.20 Plans, Specifications, And Technical Requirements.

(1) No AFO animal waste management system shall be constructed, modified, repaired, or placed into operation after April 1, 1999 unless it is designed, constructed, operated, and maintained in accordance with final design plans and specifications which meet or exceed NRCS technical standards and guidelines as accepted by the Department, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(2) No CAFO animal waste management system shall be constructed, modified, or placed into operation after April 1, 1999 unless certified by a QCP that it is designed, constructed, and can be operated and maintained in accordance with a WMSP which meets or exceeds NRCS technical standards and guidelines and as accepted by the Department, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(3) Unless approved otherwise in writing by the Director pursuant to Rule 335-6-7-.22, new well siting and construction, and new or existing well operation and maintenance, all waste management activities including but not limited to structural designs, system plans, waste storage, handling, and transport, nutrient management, land application, dead animal disposal including incinerator and freezer siting and operation, waste product disposal, construction erosion and sediment control BMPs, spill prevention control and countermeasures (SPCC) BMPs, other necessary BMPs required for good housekeeping, and implementation of waste management practices for AFOs and CAFOs shall be in accordance with this Chapter, the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, and shall meet or exceed the technical standards and guidelines contained in the NRCS Field Office Technical Guide and other approved technical publications or documents as amended, for the year that the practice was implemented, to include:

(a) Conservation Practice Standards - Field Office Technical Guide, Section IV, Standards and Specifications, February, 1990, as amended.

(b) Agricultural Waste Management Field Handbook - National Engineering Handbook Series (NEHS), Part 651, April 1992, as amended.

(c) Alternative or innovative technology implemented in accordance with Rule 335-6-7-.22.

(d) General best management and housekeeping practices implemented in accordance with Rule 335-6-7-.21.

(4) If full implementation and regular maintenance of management practices that meet or exceed NRCS technical standards or guidelines are not or will not be protective of water quality and/or reduce the generation of odors to the maximum extent practicable, the owner/operator of an AFO shall implement, within timeframes required by the Director

or his designee, additional effective structural and nonstructural management practices necessary to adequately protect water quality and/or reduce the generation of odors to the maximum extent practicable.

[. . .]

(19) All WMSPs shall be developed to meet or exceed NRCS technical standards and guidelines and address operation of the lagoon, waste storage ponds/sumps, and other waste storage facilities, and the location, amount, and timing of land application of wastes with respect to the nutrient uptake cycle of the vegetation on the land application site(s), minimization of odors to the maximum extent practicable, and minimization of potential disease vectors and nuisance pests.

(20) Unless the AFO owner /operator contracts in writing with a valid CAWV for all waste generated, or the owner/operator properly sells or gives away in good faith the waste to another person, the comprehensive waste management system BMPs for the entire farm, facility, or operation must include written agreements for use of all land application sites with documentation that adequate land application area is readily available. If the waste is sold or given away in good faith, the owner/operator or CAWV shall retain detailed, complete records of the transaction and provide the receiver of the waste information explaining the requirements of this Chapter. AFO waste management system BMPs must meet or exceed NRCS technical standards and guidelines. A CAFO WMSP must be prepared by a QCP and must meet or exceed NRCS technical standards and guidelines. The Department may require proof of land ownership, contractual agreements, or written permission for use of land as a land application site.

[. . .]

335-6-7-.21 General Best Management And Housekeeping Practices.

(1) Owners/operators of AFOs shall fully implement and regularly maintain comprehensive waste management system Best Management Practices (BMPs) and owners/operators of CAFOs shall fully implement and regularly maintain comprehensive BMPs as part of an approved WMSP, that meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto, and accepted by the Department, that includes but is not limited to:

(a) Structural and non-structural practices which will be implemented and maintained to prevent/minimize the discharge of all sources of pollution (e.g. sediment, trash, garbage, debris, oil and grease, chemicals, materials etc.) to State waters in stormwater runoff during the construction of the facility and during water acquisition or dewatering operations;

(b) Proper disposal of solid, toxic, or hazardous wastes as required by ADEM Rules and applicable State and federal requirements and regular cleanup and

proper disposal of floating or submerged trash and garbage resulting from activities authorized by this Chapter;

(c) Appropriate, effective measures that will be taken to prevent airborne pollutants such as spray paint, herbicides, excessive road dust, etc. from entering any waterbody;

(d) Appropriate, effective measures that will be taken to ensure that materials used as earth fill for construction purposes must be non-toxic, non-acid forming and free of solid waste or other debris unless approved otherwise in writing by the Director or his designee.

(e) Spill Prevention, Control and Countermeasures (SPCC) that will be implemented for all onsite fuel, chemical, or pollutant storage tanks according to Rule 335-6-6-.12(r) and other applicable State and federal requirements.

(2) Full implementation and regular maintenance of these BMPs as required by this Chapter shall become a part of any registration and all requirements of the BMPs shall become requirements of the registration.

(3) The AFO facility owner/operator is responsible for remediation of offsite deposition or discharge of waste, wastewater, sediment, and other pollutants and shall, if required by the Director or his designee, implement Department approved measures to remediate any impacts to the maximum extent practicable.

(4) The AFO facility owner/operator shall post or make readily available in a common location easily accessible to all employees the proper procedures, and ensure that all employees are fully aware of the proper procedures, to effectively respond to any emergency situation, spill, or discharge. The posted procedures shall contain detailed response instructions to include, but not be limited to, names of facility officials to be notified, State or federal agencies to be notified, local or downstream public water supply entities to be notified, appropriate phone numbers, addresses, safety precautions, immediate actions to abate the occurrence, public health and bio-security procedures, etc.

335-6-7-.22 Alternative Or Innovative Technology.

(1) Waste management and land application system plans submitted in accordance with the requirements of this Chapter may include alternative or innovative waste management or land application technology or procedures not contained in NRCS technical standards and guidance documents, provided that:

(a) Use of the alternative technology or procedure is specifically approved for use by the NRCS and other agencies specified by the Director, and is approved by the Director or his designee, and;

(b) Point or nonpoint source pollution to waters of the State will not result from the use of the alternative technology or procedure.

(2) Reserved.

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.

335-6-7-.28 Pollution Prevention.

(1) Pollution Prevention Plans (PPP) are required to be developed and implemented by CAFO facilities in accordance with the EPA Storm Water Rules promulgated on November 19, 1990 (FR 48062) and subsequent EPA Rule requirements. The requirements for a PPP shall be considered to be met by a facility that has been properly designed, constructed, and is operated and maintained under terms of this Chapter. Copies of all documentation signed by a CAFO owner/operator submitted to the Department by the registrant, including but not limited to WMSPs, construction plans and specifications, Notice of Registration for coverage under this Chapter, and any other required documents requested by the Department shall be kept at the facility and will constitute the equivalent of a PPP.

(2) If not included in the documents addressed above, the PPP and any additional information regarding requirements shall be prepared and certified by a QCP and signed by a CAFO owner/operator and retained on site for review by Department representatives and shall include implementation of and compliance with the following:

(a) Written provisions for weekly inspection/evaluation of all waste management system practices, structural controls, and daily inspection/evaluation of each land application site during land application, and when precipitation has occurred within 7 days since the last application. Records shall include the dates for each inspection/evaluation, a log of the findings and action taken as a result of such inspection/evaluation, and shall be signed by the person(s) performing the inspection/evaluation.

(b) Written provisions for annual inspection by a QCP of all waste management system facilities, structural controls, and each land application site where wastes/wastewater have been applied in the previous year. Records shall include dates for each inspection, a log of the findings and action taken as a result of such inspections, and shall be signed by the person(s) performing the inspection/evaluation.

[. . .]

(h) The owner/operator shall keep records and ensure that storage and land application of animal liquid wastes, manure, or mortality compost shall not cause a discharge of pollutants to waters of the State, unless responsibility for ensuring

proper management and preventing discharge(s) of any waste is properly assumed in writing by a CAWV. Except as provided by Rule 335-6-7-.32 (3) and (4), discharge (runoff) of waste from the land application site is prohibited.

(i) When animal liquid wastes, manure, or mortality compost is sold or given away to persons other than a CAWV, the owner/operator must maintain a log of:

1. Date of removal from the facility.
2. Temporary storage areas.
3. Name, address, and phone number of hauler/transporter.
4. Amount, in wet tons, cubic yards, or gallons of waste removed from the facility. (Incidental or de minimus amounts, as determined by the Director or his designee, need not be logged).

(j) Where waste is to be land applied by the hauler/transporter, the owner/operator must provide to the hauler/transporter any available nutrient analyses or the NRCS approved average nutrient value of the waste from that year.

2) Ala. Admin. Code r. 335-6-20-.01, .02, .03, .07, .08(6), .10(1(a)).

335-6-20-.01 Purpose.

1) The purpose of this chapter is to establish the procedures and requirements for the issuance and maintenance of pollution source permits for reclaimed water reuse facilities, also referred to herein as “Reclaimed Water Reuse Permits.”

(2) Reclaimed Water Reuse Policy. Highly treated reclaimed water that meets the requirements of this chapter is a valuable water resource and is considered an integral part of the utility system. It is the policy of the Department to promote, where appropriate, the practice of reuse of municipal reclaimed water through the creation and implementation of rules that give permittees various opportunities for forms of reuse.

335-6-20-.02 Definitions.

The following definitions describe the meaning of certain terms used in this chapter, unless a different meaning clearly appears from the context:

(1) “Applicant” means the person applying for a Reclaimed Water Reuse Permit.

(2) “Applicable Requirements” means any state, local or federal statutes, regulations or ordinances to which the facility is subject.

(3) “Aquifer Storage and Recovery (ASR) Well” means an injection well used for the injection of treated municipal wastewater, groundwater or surface water, for the purpose of storage in a designated aquifer, and recovery at a later time for a beneficial use.

(4) “Buffer Distance” means a specified distance between an actual point of reuse of reclaimed water and a land feature or resource use specified in this chapter, such as public/private wells, adjoining property, inhabited dwellings, or other features as specified by the Department.

(5) “Class A Reclaimed Water” means a secondary treated municipal wastewater that has received additional treatment including, at a minimum, coagulation, clarification, filtration and disinfection, or an alternate process acceptable to the Department. See rule 335-6-20-.10 for Class A reuses and applications.

(6) “Class B Reclaimed Water” means a secondary treated municipal wastewater that has received additional treatment including, at a minimum, disinfection. See rule 335-6-20-.10 for Class B reuses and applications.

(7) “Customer” means a designated User or Users for the purposes of this chapter.

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

(9) “Designated User or User” means any site or facility where reclaimed water is reused under a contract with the permittee. User may also be defined as the person to be supplied with reclaimed water who has a written user agreement with the permittee, or a purveyor who provides reclaimed water to others.

(10) “Director” means the Director of the Department of Environmental Management or his/her designee.

(11) “Domestic Wastewater” means wastewater from residences and other wastewaters of similar composition and strength and not wastewater generated by industrial processes.

(12) “Five-Day Carbonaceous Biochemical Oxygen Demand (CBOD5)” means the quantity of oxygen utilized in the biochemical oxidation of carbonaceous organic matter present in water or wastewater, reported as a five-day value determined using EPA approved methods. In this test the oxidation of nitrogenous matter is inhibited.

(13) “Industrial Wastewater” means all wastewater, treated or untreated, that is not defined as municipal wastewater.\

(14) “Land Application” means the removal of wastewater and/or waste solids from a treatment facility and distribution to, or incorporation into, the soil mantle at agronomic

rates for beneficial purposes which meet or exceed National Resources Conservation Service (NRCS) technical standards and guidelines.

(15) “Municipal Wastewater” means wastewater discharged to a POTW or a Semi-Public or Private treatment facility containing majority domestic wastewater.

(16) “Non-consumable Agricultural Irrigation” means the irrigation of crops not intended for direct human consumption.

(17) “Non-Potable Mains” means the pipelines that collect and/or convey non-potable discharges from or to multiple service connections. Examples include sewage collection and interceptor mains, non-potable irrigation mains, and reclaimed water mains.

(18) “Peak Day Flow” means the largest volume of flow to be received during a one day period expressed as a volume per unit of time.

(19) “Permit” means any permit issued pursuant to division 335-6.

(20) “Permittee” means the person to whom a permit has been issued pursuant to division 335-6.

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

(22) “Point of Compliance” means that point in the reclaimed water reuse facility where the reclaimed water must meet the requirements of the permit. A permit may require more than one point of compliance within the facility depending on the constituents to be monitored.

(23) “Potable Water” means water suitable for human consumption.

(24) “Reclaimed Water” means wastewater that has received treatment which meets the criteria specified under this chapter.

(25) “Reclaimed Water Distribution System” means the network of pipes, pumping facilities, storage facilities and appurtenances designed to convey and distribute reclaimed water from one or more domestic wastewater treatment facilities to one or more users of reclaimed water.

(26) “Reclaimed Water Pond” means any lake, pond or other water holding feature constructed or managed to store reclaimed water where swimming, wading, boating, fishing, and other water-based recreational activities are prohibited. A landscape

impoundment is created for storage and may incidentally serve a landscaping or aesthetic purpose.

(27) “Reclaimed Water Reuse Facility” means a wastewater treatment system consisting of a series of units or treatment processes which produces a highly treated source of wastewater suitable for reuse.

(28) “Reuse” means the use of reclaimed water as a substitute for other water sources for the beneficial irrigation of areas that may be accessible to the public. This includes areas such as golf courses, residential and commercial landscaping, parks, athletic fields, roadway medians and landscape impoundments. (29) “Reuse Facility or Facility” means any structure or system designed or used for reuse of wastewater including, but not limited to, municipal wastewater treatment facilities, pumping and storage facilities, pipeline and distribution facilities, and the property to which the reclaimed water is applied.

(30) “Secondary Treatment” means, for the purposes of this chapter, the secondary treatment as defined in 40 CFR Part 133; however the percent removals for CBOD5 and TSS shall not apply.

(31) “Sewage” means water carrying human wastes from residences, buildings, industrial establishments or other places, together with such ground, surface, storm or other waters as may be present.

(32) “Total Suspended Solids” means solids that either float on the surface of, or are suspended in, water or wastewater; the quantity of material removed from a sample in the laboratory referred to as filterable residue, as determined using EPA-approved methods.

(33) “Wastewater” means any combination of liquid or water and pollutants from activities and processes occurring in dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any ground water, surface water, and storm water that may be present; liquid or water that is chemically, biologically, physically or rationally identifiable as containing blackwater, gray water or commercial or industrial pollutants; and sewage.

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

335-6-20-.03 Applicability.

- (1) Applicability for reclaimed water reuse facilities. Any non-excluded reclaimed water reuse facility reusing or offering for reuse municipal reclaimed water in a manner that

holds a reasonable potential for discharge of pollutants to waters of the State shall apply for and obtain a permit for the reuse of those wastewaters.

(2) Excluded Facilities.

(a) Land application of industrial wastewater that is beneficially used and complies with NRCS standards.

(b) Land application activities regulated under NPDES permits.

(c) Facilities with active land application sites that were approved by the Department prior to the promulgation of this rule.

(d) Underground Injection facilities regulated by chapter 335-6-8, with the exception of ASR wells utilized for water reuse through surface application irrigation.

(e) Wastewater systems regulated by the Alabama Department of Public Health.

(f) Incidental use of reclaimed water for landscape irrigation at a municipal wastewater treatment plant if:

1. There is no other reclaimed water use that would subject the municipal wastewater treatment plant to the requirements of this chapter;

2. The municipal wastewater treatment plant has coverage under an NPDES permit, and the quality of the effluent meets that required by the NPDES permit; and

3. Public access to the area of landscape irrigation is restricted.

(g) The Director may exclude other facilities if covered adequately by other regulations.

335-6-20-.07 Permit Application.

(1) Pre-Application Conference. Prospective applicants are encouraged to meet with the Department prior to submission of an initial application to discuss the application procedure and anticipated application and/or permit requirements.

(2) Duty to Apply. Any person who is operating or proposing to operate an affected municipal reclaimed water reuse facility as specified in rule 335-6-20-.03 shall promptly apply for a Reclaimed Water Reuse Permit in accordance with this rule.

(3) Time to Apply. Any person proposing to acquire a Reclaimed Water Reuse Permit shall submit a complete application, including applicable fees, at least 180 days before the expected date of water reuse system operation and/or before commencement of reuse.

- (4) (4) Duty to Reapply. Any permittee with an effective permit shall submit a new completed application at least 180 days before the expiration date of the existing permit if proposing to continue to operate.
- (5) Complete Application. The Department may not issue a Reclaimed Water Reuse Permit before receiving a complete application for a permit. An application for a permit is complete when the Department receives all applicable application form(s), the full and appropriate permit application fee as required by chapter 335-1-6, and any other supplemental information requested by the Department. The Director shall determine if a permit application is complete as defined by this rule and if all the information necessary for determining permit conditions has been submitted. If additional information is required, the Director shall request the information from the applicant in writing, and the applicant's failure to respond within the timeframe requested shall be grounds for denial of the permit application.
- (6) Incomplete Application. The Department may take enforcement action as prescribed by state law or this regulation against any person who fails to file a complete application within the required timeframes listed above.
- (7) Information Requirements. All applicants for Reclaimed Water Reuse Permits, including new applicants and applicants requesting reissuance or expansion of an existing permit, shall submit to the Department a complete application to include the following:
- (a) The appropriate ADEM application form(s) signed in accordance with paragraph 335-6-20-.08(13).
 - (b) For proposed facilities and proposed modifications to existing facilities, an Engineering Report in accordance with chapter 335-6-3 for reclaimed water reuse to include treatment plant design specifications detailing what treatment processes will be built at the proposed facility site and also detailing any and all reuse site(s) that are or will be operated or administered by the permittee under the water reuse permit.
 - (c) The application shall include the following process schematics and topographic maps, as applicable:
 1. For a reclaimed water reuse facility, a process schematic and a topographic map of at least 1:24,000 scale that extends at least one half-mile beyond the property boundaries of the reclaimed water reuse facility.
 2. For a reuse facility located at a reclaimed water reuse facility, a topographic map of at least 1:24,000 scale that extends at least one half-mile beyond the property boundaries of the reuse facility. The map shall depict the treatment facility; any on-site reuse sites and activities; any intake, storage and distribution structures; any inhabited dwellings; potable water supply wells; and any hazardous waste treatment, storage, or disposal facilities. Distribution pipelines associated with the reuse facility are not required to be included in the map.

3. For a reuse facility not located at a reclaimed water reuse facility, a topographic map of at least 1:24,000 scale that extends at least one half-mile beyond the property boundaries of the reuse facility. The map shall depict any storage and distribution structures, inhabited dwellings, and potable water supply wells. Distribution pipelines associated with the reuse facility are not required to be included in the map.

(d) For applicants intending to reuse reclaimed water for agricultural/silvicultural purposes, a Nutrient Management Plan as described more fully in paragraph 335-6-20-.08(6).

(e) A representative laboratory analysis of the treated wastewater that is to be reused. The list of parameters shall conform to the applicable Department approved forms and the Department may require additional monitoring as deemed necessary. For new applicants, results shall be reported based on any representative laboratory analysis or expected discharge levels. If estimates are used, then the permittee shall submit analysis results to the Department no later than thirty days prior to application of reuse water.

(f) A list of all non-domestic users and significant industrial users, as defined by chapter 335-6-5, discharging to the wastewater treatment facility. The location and nature of each operation, the average discharge volume and, if available, a characterization of the wastewater shall be included.

335-6-20-.08 Standard Permit Conditions.

[...]

(6) Nutrient Management Plan. For each agricultural/silviculture reclaimed water reuse, a Nutrient Management Plan completed by a Certified Crop Advisor and certified through the American Society of Agronomy, must be submitted to the Department with the application, and annually no later than May 28th, detailing: the application rate and uptake of nitrogen and phosphorus from each land application site; crop management and harvesting rates and practices; and a mass balance of nutrients, minerals, and other pollutant constituents as appropriate, applied to each land application site. The Nutrient Management Plan shall be retained onsite and available for review by the Department. An alternate site may be approved by the Department if requested.

[...]

335-6-20-.10 Municipal Reclaimed Water Reuses.

(1) Reuses for Class A and Class B reclaimed water include:

(a) Land application on fodder, fiber crops, ornamental nursery stock, sod and seed crops not intended for human ingestion, and pasture for animals not producing milk for human consumption;

[...]