

# CONSTRUCTION & NORMAL, SCHEDULED MAINTENANCE INFORMATION

## **ADEM Admin. Code Rule 335-6-12-.02 [Definitions]**

(a) “Alabama Handbook” means... the Alabama Handbook For Erosion Control, Sediment Control, And Stormwater Management On Constructions Sites And Urban Areas, Alabama Soil and Water Conservation Committee (ASWCC)...

(e) “Construction” means any land disturbance or discharges of pollutants associated with, or the result of building, excavation, land clearing, grubbing, placement of fill, grading, blasting, reclamation, areas in which construction materials are stored in association with a land disturbance or handled above ground, and other associated areas including, but not limited to, construction site vehicle parking, equipment or supply storage areas, material stockpiles, temporary office areas, and access roads. Construction also means significant pre-construction land disturbance activities performed in support or in advance of NPDES construction activity including, but not limited to, land clearing, grubbing, dewatering and geological testing. Construction does not include de minimus [very small or insignificant] pre-construction or other minor land disturbing activities, such as, but not limited to, the installation of auger holes, bore holes, or small excavations, unless such activities cause discharges which present a reasonable potential for significant contribution of pollutants to State waters or reasonable potential to cause or contribute to a violation of applicable water quality standards. For the purposes of this Chapter, construction does not include mining, wet preparation, beneficiation, recovery, storage, handling, and transloading of coal or metallic ores/minerals, and any mining or mineral processing, beneficiation, storage, handling, and associated activity/disturbance equal to or greater than five (5) acres in size.

## **ADEM Admin. Code Rule 335-6-12-.03 [Applicability]**

(4) Unless required in writing by the [Department], maintenance and repair activities at existing roads, utility infrastructure, bridges, other facilities or structures, including but not limited to, repaving, painting, bridge repair, vegetation maintenance, tree replacement, normal maintenance of existing unimproved roads, that are not associated with new or additional defined or designated NPDES construction disturbance activity are not required to register under this Chapter.

## **ADEM Admin. Code Rule 335-6-12-.07 [Registration Requirements]**

(d) Registration under this Chapter is conditionally granted, and the requirement to submit an NOR, information contained or required in the NOR, or submittal of the registration fee under this Chapter is suspended for governmental agencies and utilities to allow for immediate and effective emergency repairs and response to natural disasters, human health or environmental emergencies, or to avert/avoid imminent, probable, or irreparable harm to the environment or severe property damage. The operator or controlling/participating federal, State, or local government agencies/entities conducting emergency construction activity shall document the emergency condition, ensure compliance with the BMP requirements of this Chapter to the extent possible, and shall notify the Department as promptly as possible regarding the occurrence of the emergency construction disturbance and measures that have been implemented and are being implemented to protect water quality. Unless the requirement to register pursuant to the requirements of this Chapter are suspended or voided by the Director on a categorical or individual emergency basis, the operator shall submit the appropriate project information, NOR, and the required registration fee for construction or reconstruction activity after emergency repairs have been accomplished, according to a schedule acceptable to the Department.

## **ADEM Admin. Code Rule 335-6-12-.21 [CBMPPs, Other Plans, Specifications, BMPs, And Technical Requirements]**

(5)(a) BMPs shall be fully implemented and regularly maintained in accordance with the Alabama Handbook, recognized practices, effective industry standard pollution control practices, requirements of the CBMPP, the requirements of this Chapter, and consistent with the requirements of the AWPCA and regulations promulgated pursuant thereto;

(5)(d) BMPs shall not result in the contamination of drinking water and shall not cause or contribute to a violation of any State water quality standard;

(6) The operator is responsible for remediation of any offsite deposition or discharge of sediment and other pollutants and shall, if required by the Department, implement measures to remediate any impacts to the maximum extent practicable.

(8) BMPs shall not be installed in a water of the State except as provided in the Alabama Handbook, and unless authorized by the Department.

(9) Effective measures shall be taken to prevent, to the maximum extent possible, the deposition/disposal, and to effect the removal as necessary, of materials, waste, debris/litter, or liquids resulting from bridge/culvert NPDES construction. Examples of these materials include, but are not limited to, waste concrete/cement, wash water, surfactants, sand blasting particles and paint, from falling or being placed into any waterbody.

(10) The installation or use of instream or within-bank sediment storage traps or deposition areas, or other sediment storage/detention BMPs, in waters of the State is not authorized.

(11)(b) The bottom of any new or diverted channel is concave in shape or has a base-flow channel to ensure adequate concentrated and unobstructed flow of water during periods of low flow;

(11)(f) The width of any access through a streambank is minimized to the extent practicable, and a continuous program of effective erosion and sediment control measures is implemented prior to and concurrent with construction disturbance. When NPDES construction disturbance is completed, access through the streambank shall be restored to original contours, stabilized, and, unless structural forms of stabilization such as stone rip-rap are more appropriate, vegetated with annual and perennial vegetation consistent with pre-disturbance conditions or such alternate condition that provides an equal protection of water quality;

## **Discussion**

New construction, expansion construction, or significant reconstruction (considering size, duration, and association with other regulated construction activity) requires registration if the disturbance and associated areas (equipment storage and maintenance areas, material stockpiles, fuel tanks, etc.) is (1) equal to or greater than 1 acre, (2) less than 1 acre if part of a larger plan/project of development/disturbance/sale, (3) any size if determined by the operator or QCP, or if designated by ADEM to be a potential significant contributor of pollutants, and (4) any size if determined by the operator or QCP, or if designated by ADEM to have significant potential to cause or contribute to a violation of applicable water quality standards. Construction activities of any size are required to register if an inspection by the operator QCP reveals ineffective or nonexistent BMP implementation and the QCP is unable to document and certify that discharges did not result in a significant contribution of pollutants and/or cause or contribute to a violation of applicable water quality standards.

Normal, scheduled maintenance does not require registration unless associated with new or expanded construction and provided effective BMPs are fully implemented and maintained. Normal maintenance is regular and routine scheduled activity to keep a site or structure in its intended, designed condition, conducting scheduled or routine repair designed to prevent disrepair or failure, and/or maintaining a recurring standard of care to keep in good working order. Normal maintenance activities are considered to be of limited size, temporary in duration, and conducted in isolation from other regulated construction disturbances. Simple vegetation removal, mowing, cutting, and replanting that does not involve tracking, blading, grubbing, grading, or significant disturbance of the ground that is conducted in isolation from other regulated construction disturbances, is not required to register. Limited blading, grading, cleaning/reshaping existing roadside ditches, removal of buildup of sediment from sediment traps, maintaining wing/turnout ditches to divert and spread runoff away from the road base into adjacent wooded/vegetated areas, simple placement or adjustment of rip/rap, particularly around stream crossings and culverts, etc. according to original design considerations is not required to register. Simple paving or application of tar and crushed rock/slag to stabilize an existing road surface without road base widening, grading, ditching, preparation, culvert installation, ROW shaping, etc., of an existing unimproved road is not considered regulated construction. However, experience has shown that this paving cannot be done in the absence of other necessary disturbance activity that is regulated as construction under the rules. Simple repaving without widening,

culvert installation, ROW shaping, etc., of an existing road would be considered normal maintenance. These concepts apply to construction/operation activities related to dirt roads, unimproved roads, paved roads, etc.

Reconstruction or rebuilding, including staging area and access ways, that equals or exceeds one (1) acre in size (requires registration) is not normal maintenance. Examples include but are not limited to extensive repairs or changes either as a result of accumulated maintenance needs, age, etc., demolition and replacing of a structure, adding onto an existing structure, earthwork or grading related to slope stabilization or layout, landscape or slope modifications to facilitate additional construction, and/or modernization of facilities.

Critical emergency response activities that equal or exceed one (1) acre in size (prior or after-the-fact registration required unless waived by ADEM) as a result of a natural disaster or critical emergency can be performed immediately and do not need to be delayed pending registration. Examples include but are not limited to restoring critical services, protecting human life or safety, or protecting/maintaining critical infrastructure in imminent danger of failure, etc. While not interrupting or inhibiting the on-the-ground emergency response, the operator should contact the local ADEM office as soon as possible to determine if registration is needed.

If you have a question whether an activity is normal maintenance, there is a good possibility that it is not. It is advisable to either submit a complete/correct registration and then begin work, or contact your local ADEM office to determine the need to register on a case-by-case basis.

One of the problems that occur with many types of construction operations is that they begin as normal maintenance activities, but can end up having the activity inadvertently change and/or expand into something that is not solely normal, scheduled maintenance, especially on large projects, linear/roadway projects, or roadwork in rapidly developing areas. In other words, the portion of a larger project is normal maintenance if properly conducted, but regulated construction activities may occur when considered with other ongoing activity/projects by the operator or another entity, or projects are expanded, and because of that may be required to obtain registration coverage.

Effective BMP implementation and maintenance to control runoff is required in all earth disturbing situations. Regular follow-up inspections and effective maintenance must be performed until disturbed areas, regardless of size, are permanently stabilized and reclaimed. Natural vegetative buffers may be sufficient to provide effective runoff treatment without installation of additional BMPs allowing small disturbances to revegetate naturally.

Limited blading or placing fill next to a road that has been repaved to ensure safe grade transition to existing shoulder of the roadway for safety purposes or blading an existing safety is considered normal maintenance and not construction. Blading or placing fill next to a road to widen the road, shoulder, or adding a new safety lane is considered construction.

Adding width to the road, shoulder, or adding/lengthening a turn lane is new construction and is not normal maintenance. Grinded old asphalt, fuel tanks, etc. must be properly managed. Temporary BMPs are required to be implemented if polluted runoff could reasonably occur and leave the ROW thus impacting water quality. The operator should promptly place stone over the bladed material, grass or otherwise stabilize the bladed area. In cases of unregulated activity, permit coverage is not required provided the grading/fill/disturbance is the minimum necessary to effect the normal scheduled maintenance, it does not increase or add to the width of the existing road or shoulder, and it is not in conjunction with any new/additional construction.

Rule requirements are applicable to all construction, other than normal maintenance, if the disturbance equals or exceeds one (1) acre including associated areas such as onsite/adjacent staging or equipment areas, portions of ROW where equipment/vehicles traverse, material stockpiles, etc. If a turn lane is added or the width of a paved traffic lane is extended such that one (1) acre is exceeded, then registration is required. For example if the disturbance goes from an 8-foot wide lane to a 12-foot lane by adding 4-feet for 3 miles, then the disturbance (4' x 3 miles x 5,280'/mile - including equipment/staging areas) exceeds the 43,560 sq. feet and registration is required. If a new lane is added and the threshold is equaled or exceeded, then registration is required.

However, if any new/increased construction regardless of size is being conducted at the same time in conjunction with normal maintenance activities, then the entire disturbance (normal maintenance + new) must be used to determine the one (1) acre registration threshold. If the project simply maintains/updates/fixes the existing roadway and does not add width

by disturbing the adjacent soil, then it is not new construction, but is in fact normal maintenance, and registration is not required. Significant reconstruction to repair large slope failures, replace culverts/bridges, major disturbance work to perform delayed regular normal maintenance is not considered normal maintenance and requires registration coverage.

In all cases, effective BMPs are required to be installed and maintained. The local ADEM office may be contacted with a description and digital photos of what is being proposed and ADEM will assist in determining if registration is required. If necessary, onsite compliance assistance can be scheduled at the Operator's request. It is recommended that an operator/owner document by email, facsimile, or letter any registration/compliance decisions or issues as a result of communication with ADEM.

	<b>SITUATION - Assumes effective BMPs are fully implemented and regularly maintained.</b>	<b>CONSIDERATION</b>
1	Regular removal of accumulated sediment from storm ditches and culverts	Normal maintenance. Registration not required.
2	Temporary access to perform normal maintenance is achieved by temporarily cutting into a slope to create temporary access. The disturbed area of the slope is minimized to only what is specifically needed to provide safe access and exceeds 1 acre. The slope will be restored.	Requires registration. If normal, scheduled maintenance (see discussion) registration not required if new construction to access area is less than 1 acre.
3	A significant slope failure occurs on the ROW of an open road. The slide area and staging used to stabilize the slide encompass an area that exceeds 1 acre.	Reconstruction. Requires registration since the disturbed area exceeds 1 acre. Critical emergency response activities may be waived by ADEM on a case-by-case basis.
4	Sight distance is restricted by trees and brush at an intersection. For safety, the area is cleared to the ROW resulting in more than 1 acre being cleared.	If the "clearing" activity consists only of cutting of trees and mowing/chipping/removing vegetation without any grading, grubbing, or significant ground disturbance, then it is considered normal maintenance and registration not required.
5	Sight distance is restricted at an intersection due to grade. The road and shoulders are lowered by 2 feet by excavation and replaced with the same width roadway. The area disturbed exceeds 1 acre.	Reconstruction. Requires registration since the disturbed area exceeds 1 acre.
6	Access is needed to perform normal maintenance on the underside of a bridge. Brush and vegetation under the bridge are removed (no grubbing or grading) to create a temporary staging area. This area exceeds 1 acre.	If normal, scheduled maintenance (see discussion) registration not required if new construction disturbance to access area and create staging area is less than 1 acre.
7	A 1.5 acre wildflower plot is created in the median of the interstate or ornamental trees are planted in the median.	Registration not required.
8	The wildflower plot above is tilled and reseeded the following season or ornamental trees are mulched.	Registration not required.
9	A clearing operation to restore driver recovery area along a roadway disturbs more than 1 acre.	If the activity consists only of cutting of trees and mowing/chipping/removing vegetation without any grading, grubbing, or significant ground disturbance then it is normal maintenance and registration not required.
10	In order to bring an existing road up to mandated safety specifications, fill is added to widen the shoulder of a road with a steep grade or sharp curve, or a guardrail is installed, or a steep roadside slope is excavated.	Construction. Requires registration if the disturbed area exceeds 1 acre.

## **Document Update**

This document is intended to provide helpful information relative to the requirements of ADEM's NPDES stormwater program for construction and small noncoal, nonmetallic mining/processing sites (ADEM Administrative Code Chapter 335-6-12). This document is intended as an informal discussion of portions of the rules and does not modify or affect in any way the provisions of Chapter 335-6-12 or other ADEM rules. The information contained in this document is subject to regular revision/update/correction as needed to effectively communicate information. Periodic review of the information presented in this document will be accomplished and modification of this information will be undertaken as necessary to ensure consistency with any applicable statutory/regulatory requirements. This information document is not a legal document and is not to be construed with and does not replace, modify, or impose restrictions on current applicable statutory authority or ADEM authority. This document is also not designed nor intended to detail every possible procedure, priority, or issue related to the rules and may not provide the reader with a complete understanding of related/linked supplementary/complementary ADEM requirements/procedures or other details of the program.