



Coosa River below Jordan Dam

Director Lance LeFleur
Alabama Department of Environmental Management
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Director LeFleur,

This letter highlights a few key areas where the Division 6 revisions approved by the Alabama Environmental Management Commission in December 2016 warrant special attention by you and your staff. This letter is written and submitted by Coosa Riverkeeper on behalf of Black Warrior Riverkeeper, Cahaba Riverkeeper, Choctawhatchee Riverkeeper, Coosa Riverkeeper, Hurricane Creekkeeper, Little River Waterkeeper, Mobile Baykeeper, and Tennessee Riverkeeper.

Recently submitted Draft Permits will not comply with the revised regulations by the time they are issued. We want you to know that, based on our interpretation, the changes outlined below must be made to those and future permits. Should you or your staff disagree with us on any of our interpretations, please contact me to arrange a conference call or the like so we may discuss.

Of the many changes to Alabama's environmental regulations approved this past December, this letter focuses on the ripple effects of two:

1. The recreational use season was extended to include May and October; and
2. The single sample criteria for *E. coli* on Fish & Wildlife and Public Water Supply classified waters was corrected to 298 col/100mL (previously 487 col/100mL).

These revisions to the regulations were filed with the Legislative Reference Service on December 20, 2016 and thus take effect after 45 days, this Friday, February 3, 2017. Rule 335-6-6-.14 makes clear that the revised regulations will apply for any final administrative action that takes place on or after February 3:

An applicable requirement is a state statutory or regulatory requirement which takes effect prior to final administrative disposition of a permit. An applicable requirement is also any requirement which takes effect prior to the modification or revocation and reissuance of a permit.

This means, most notably, that permits that were recently put out as Draft Permits but will not be finalized by February 3 will need to be re-evaluated before issuance to ensure they comply. In Exhibit A we list all permits that have recently been noticed for public comment that may not incorporate the changes that will be in effect before those permits are finalized. We hope that after reviewing this letter you will direct your staff to make the necessary changes to those

Draft Permits and notice them to the public for comments again before finalizing them. Please include this letter as a comment in the file of each of the permits listed in Exhibit A. We intend to challenge any permit, whether listed in Exhibit A or not, that your Department finalizes on or after February 3 that does not comply with the revised regulations.

Before going in depth, here are four things we expect to change based on our interpretation of the revised regulations:

1. For NPDES permits regulating bacteria that have a “summer” and “winter” limit, the months of May and October must be added to the summer season during the next reissuance or modification of the permit;
2. For NPDES permits regulating *E. coli* that have previously used the 487 col/100mL standard for the daily maximum limitation, that number must be revised to 298 col/100mL during the next reissuance or modification of the permit;
3. NPDES permits regulating bacteria on waterbodies that have an impairment for bacteria must be modified as soon as possible. The time period for those facilities to comply with their modified permits will be three years; and
4. In the development of the 2018 §303(d) List of Impaired Waters, the Department’s Water Quality staff should review all data for Fish & Wildlife waters to reassess whether those waters are impaired for bacteria, given the increase in the number of months that the lower bacteria criteria apply.

EXPANSION OF RECREATIONAL USE SEASON

Many NPDES permits regulating bacteria on Fish & Wildlife (F&W) classified waters employ two different bacteria limits. For example, *E. coli* summer limits (ECS) apply during the recreational use season, while *E. coli* winter limits (ECW) apply outside of the recreational use season.

Prior to the new revisions taking effect, the defined recreational use season is from June through September and thus ECS limits typically apply from June through September. The revised regulations extend the definition of the recreational use season to May through October.

As a result, beginning February 3, all NPDES permits issued by your Department should define any type of summer limits, at minimum, as being from May through October, not June through September. This change should be implemented when the permit is either reissued or modified for other reasons.

CORRECTION TO *E. COLI* LIMITATIONS

Many NPDES permits regulating *E. coli* on F&W waters base their ECS limit directly on the water quality criteria. For example, the monthly average limitation for many such permits is 126 col/100mL while the daily maximum limitation is 487 col/100mL. Because the single sample standard for F&W waters during the recreational use season is being revised, the daily maximum limit in these affected permits during ECS should also be revised to 298 col/100mL. The same change is also made to Public Water Supply classified waterbodies, which we mention in passing; most waterbodies that carry Public Water Supply classifications also carry either F&W classifications which have the same bacteria criteria, or a Swimming classification, which carries a stricter bacteria criteria.

As a result, beginning February 3, all NPDES permits issued by your Department previously using the single sample bacteria standard of 487 col/100mL as the daily maximum ECS limit should be revised to use 298 col/100mL instead. Likewise, for NPDES permits regulating bacteria on F&W waters that use other methods of determining *E. coli* limitations, the revised single sample criteria must be used to calculate the appropriate limits. This change should be implemented when the permit is either reissued or modified for other reasons.

MODIFICATION OF PERMITS ON IMPAIRED WATERS

For any NPDES permit affected by the two topics above that are located on waters impaired for bacteria, the Department must modify the bacteria limits and seasons as soon as possible. Rule 335-6-10-.05(6) states:

Where necessary to attain compliance with a new water quality standard, existing permits for the discharge of wastewaters shall be modified or reissued to limit the discharge of a substance causing or contributing to the failure of a water of the state to meet the new standard. Compliance with the modified limit shall be required as soon as practical, but in all cases within three years of the adoption of the new standard.

The Department should compile a list of permits regulating bacteria that discharge to waterbodies with a Category 4 or 5 impairment for bacteria. We compiled a list of F&W waterbodies with a Category 5 bacteria impairment on the 2016 §303(d) List of Impaired Waters and included it as Exhibit B for your convenience. WWTPs on any of these segments may fall under this requirement. We highlighted segments that listed "Municipal" sources of impairment as key places to look for NPDES permits regulating bacteria.

For the impacted facilities, the regulations require the Department to modify these permits to meet the revised bacteria regulations, though arguably if the permit is due for reissuance soon, the changes can be incorporated during reissuance instead of via modification. In either case, these facilities will have three years to reach compliance with those new limitations. It seems reasonable that the Department could initiate such a procedure to begin modifying permits within three months of the effective date of the revisions. However, if you think it would take longer to begin doing so, please let us know what timetable you believe is appropriate. If an unreasonable delay appears likely, we will seek an audience with the Commission to bring this matter to their attention.

We note that Calera Pollution Control Plant NPDES Permit No. AL0050938 on Buxahatchee Creek of the Coosa River is an impacted facility and therefore request you initiate a procedure to modify that permit within a reasonable timeframe. That permit was most recently issued on August 29th, 2016 and expires on August 31, 2021. The permit lists ECS as June through September and the ECS daily maximum *E. coli* limitation as 487 col/100mL. In light of the revisions, the permit should be modified to define ECS as May through October and revise the ECS daily maximum *E. coli* limitation to 298 col/100mL.

IMPACT TO §303(D) LIST OF IMPAIRED WATERS

These changes to the regulations will also have to be considered when the Water Quality staff make assessments for the 2018 §303(d) List of Impaired Waters. Some waters which previously would not have been considered impaired for bacteria may now, using the same data, be

considered impaired. Most likely to be affected are F&W waters where the lower single sample bacteria standard that applies in two more months than before will be exceeded on 10% or more of samples. We bring this to your attention as a friendly reminder that the 2018 list will require a little extra energy as old data is reassessed under a new lens. For our part, when we submit our data for consideration later this year, we will be sure to compare it to the revised criterion and also include notes of any recently submitted data which should be reexamined in the new light. For example, Choccolocco Creek data submitted by Coosa Riverkeeper in 2015 is known to show an even stronger indication of impairment for bacteria under the revised regulations.

CONCLUSION

We appreciate your consideration of our articulated areas of concern. We assume you are already aware of each of the topics raised herein. Due to several permits being noticed for public comment that did not incorporate these changes and a slower than desired response to our letter on January 18, we thought it would be wise to open a dialogue on this subject in advance of the revisions taking effect this Friday. If you feel in any way that we might disagree on some of these interpretations, please do not hesitate to contact me to discuss so we can avoid any protracted debates and challenges that might arise. E-mail or telephone is the preferred means of contact. Thank you for your time and we look forward to hearing from you.

For Our Rivers,



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V. Anne Heard, EPA Region 4, Acting Regional Administrator
Mary Walker, EPA Region 4, Water Protection Division
Mark Nuhfer, EPA Region 4, Municipal and Industrial NPDES Section

EXHIBIT A: NPDES PERMITS NOTICED TO THE PUBLIC BUT NOT YET ISSUED THAT MAY NOT COMPLY WITH REVISED REGULATIONS

File a copy of this comment letter in the currently ongoing public comment record for each of the facilities listed below.

Choccolocco Creek WWTP | Anniston Water Works & Sewer Board: NPDES AL0022195
Kowaliga Retreat WWTP | Kowaliga Retreat Homeowners Association: NPDES AL0053538
Locust Fork High School Lagoon | Blount County Board of Education: NPDES AL0054348
Millport Lagoon | Town of Millport: NPDES AL0049115
Mountain Brook Senior High School | City of Mountain Brook: NPDES AL0050971
Piedmont Lagoon | City of Piedmont Water, Sewer & Gas Board: NPDES AL0024376
Southeastern School Lagoon | Blount County Board of Education: NPDES AL0068675

The following facility's most recent Draft Permit does not comply with the revised regulations and the public comment period recently ended, but the permit has not been finalized according to a January 30th review of eFile. We reserve the right to challenge this permit if it is issued "as is" on or after February 3.

Atmore WWTP | West Escambia Utilities: NPDES AL0049557

EXHIBIT B: F&W CLASSIFIED ASSESSMENT UNITS IMPAIRED FOR PATHOGENS
Includes Category 5 Listings Only. Excludes Segments with Stricter Use Classifications.

ALABAMA RIVER BASIN

Three Mile Branch (from its source to Lower Wetumpka Road)
Coffee Creek (from its source to Tayloe Creek)
Washington Creek (from its source to Bogue Chitto Creek)

BLACK WARRIOR BASIN

Blevens Creek (from its source to Rock Creek)
Cottondale Creek (from its source to Hurricane Creek)

CAHABA BASIN

Walton Creek (from its source to Cahaba River)

CHATTAHOOCHEE BASIN

Bennett Mill Creek (from its source to Chattahoochee River)
Abbie Creek (from its source to Chattahoochee River)
Peterman Creek (from its source to Abbie Creek)

CHOCTAWHATCHEE BASIN

West Fork Choctawhatchee River (from Judy Creek to falls 1/2 mile upstream of AL Hwy 27)
Big Creek (from its source to West Fork Choctawhatchee River)
Buckhorn Creek (from its source to Pea River)
Huckleberry Creek (from its source to Pea River)
Patrick Creek (from its source to Beaverdam Creek)
Wrights Creek (from its source to AL/FL line)

CHIPOLA RIVER BASIN

Cowarts Creek (from its source to AL/FL line)

COOSA RIVER BASIN

Buxahatchee Creek (from its source to Waxahatchee Creek)

ESCAMBIA RIVER BASIN

Rocky Creek (from Co Rd north of Chapman to Persimmon Creek)

PERDIDO RIVER BASIN

Boggy Branch (from its source to Atmore WWTP) (includes Masland Carpets WWTP)

TALLAPOOSA RIVER BASIN

Little Tallapoosa River (from AL/GA line to Wolf Creek)

TOMBIGBEE RIVER BASIN

Luxapallila Creek (from Fayette Co Rd 37 to AL/MS line)
Noxubee River (from AL/MS line to Tombigbee River)

*The highlighted segments list "Municipal" as a source for the bacteria impairment