

Executive Summary for Amendment to *11 Miss. Admin. Code Pt. 6 Ch. 1. Wastewater Regulations for National Pollutant Discharge Elimination System (NPDES) Permits, Underground Injection Control (UIC) Permits, State Permits, Water Quality Based Effluent Limitations and Water Quality Certification*

The purpose of these amendments is to clarify the definition of waters of the State and enhance regulatory certainty by introducing less burdensome alternatives to permitting (*i.e.*, exemptions and conditional exemptions) for certain activities that affect waters of the State exclusively. The statutory requirement to obtain a permit for these activities has existed since the enactment of the Mississippi Air and Water Pollution Control Law in 1966. Pursuant to Mississippi Code Annotated § 49-17-29, a permit or permit exemption is required for “any person to cause pollution of any waters of the state or to place or cause to be placed any wastes in a location where they are likely to cause pollution of any waters of the state,” and MDEQ’s current regulations require the submission of an application for *any* proposed discharge to waters of the State.

These regulatory amendments ***do not require any more*** permit actions than have historically been required. In many cases, the permitting burden will be ***significantly reduced***. The activities addressed by this amendment were previously subject to the permitting requirements of Section 404 of the federal Clean Water Act (CWA) and associated Section 401 Water Quality Certification requirements. The Section 401 Water Quality Certification was the mechanism that satisfied the permit requirements in § 49-17-29. Since the United States Supreme Court handed down its decision in *Sackett v. EPA* on May 25, 2023, MDEQ, in the interim, has bridged the resulting gap in permitting through requiring Antidegradation Reports to be provided on individual projects that will impact only waters of the State (as opposed to impacting Waters of the U.S.). These Antidegradation Reports are developed according to the Antidegradation Implementation Methodology found in Exhibit E of these regulations. The use of Antidegradation Reports adds additional steps in issuance of permits and coverages while not providing a clear permitting path forward for applicants. MDEQ has undertaken an effort to provide simplification and clarity in the permitting process and believes that the proposed exemptions and conditional exemptions will reduce the regulatory burden on applicants.

These amendments seek to establish the State Water Alteration Program (SWAP), a program to authorize temporary or permanent impacts to waters of the State through exemptions, conditional exemptions, general permits, and individual permits. These amendments do not yet address the framework for general and individual permits. Initially, this program will include exemptions and conditional exemptions for certain activities that could affect waters of the State. For the purpose of these amendments, state water alteration activities include but are not limited to: the discharge of dredge or fill material, dredging, stream channel modifications, wetlands alterations (including drainage), and other construction activities which result in the alteration of waters of the State. Other categories of activities (e.g., aquatic habitat rehabilitation, outfall and intake structures, and minor discharges) may be considered in future conditional exemptions, general permits, or individual permits.

Contained within the proposed regulatory changes, MDEQ seeks to clarify the existing definition of waters of the State and to establish Subchapter 4 which contains permit exemptions for agricultural and silviculture activities; ditch maintenance activities; ditch reshaping activities; activities addressed under a Section 401 Water Quality Certification; emergency response operations; Linear Transportation Activities; Utility Line Activities; and Residential, Commercial, and Institutional Development Activities for permanent or temporary alterations to waters of the State.