

RECONCILIATION STATEMENT FOR THE PUBLIC COMMENT PERIOD AND PUBLIC HEARING ON ADEM ADMINISTRATIVE CODE CHAPTER 335-6-7

The Alabama Department of Environmental Management (ADEM) held a public comment period and a public hearing to support the mandated five (5) year review of ADEM Admin. Code Ch. 335-6-7. The purpose of the public comment period and public hearing was to accept comments regarding the content / implementation of ADEM Admin. Code Ch. 335-6-7 [National Pollutant Discharge Elimination System (NPDES) Best Management Practices (BMPs), Registration Requirements, Technical Standards And Guidelines, Construction And Operation Requirements, Waste/Wastewater And Waste Product Treatment, Storage, Handling, Transport, And Disposal/Land Application, Nutrient Management, And Animal Mortality Management Requirements For Owners And Operators Of Animal Feeding Operations (AFOs) And Concentrated Animal Feeding Operations (CAFOs)].

ADEM Admin. Code R. 335-6-7-.03(5) requires a public notice, 30-day comment period, and public hearing at least every 5-years to solicit public participation and comment regarding the content, implementation, and compliance with provisions of ADEM Admin. Code Ch. 335-6-7. Within 120-days after completion of the public participation process, a subsequent public notice is provided to inform the public regarding the Department's written response to comments and a determination of the need, if any, to modify the rules to ensure continued consistency with the requirements of the Alabama Water Pollution Control Act (AWPCA).

Copies of the public notice were made available to State and federal agencies, including the federal Environmental Protection Agency (EPA) and members of the public on ADEM's mailing and email lists. The notice was also available on the ADEM webpage.

A public comment period was initiated on July 15, 2025, and written comments were accepted until the close of the hearing record at 5:00 p.m. on August 19, 2025. During the public comment period, ADEM received three (3) written comments. Approximately twelve (12) individuals attended the public hearing with one (1) person providing oral comments.

Comments or portions of comments that are within the scope of the Department's authority are identified and addressed below. Comments can be reviewed in their entirety online via the ADEM eFile system at <http://app.adem.alabama.gov/eFile/>. Information can also be obtained by contacting the ADEM CAFO Hearing Officer by email at fieldmail@adem.state.al.us, by contacting the Department's Public Records Office at 334-271-7712 or by email at records@adem.state.al.us.

Overview

No changes were proposed to ADEM Admin. Code R. 335-6-7 as part of this five (5) year review. The continuation of ADEM Admin. Code Ch. 335-6-7 without alteration requires all existing and future Animal Feeding Operations (AFOs) and Concentrated Animal Feeding Operations (CAFOs) to fully comply with all environmental control and water quality protection requirements, including but not limited to facility siting, construction, operation, and closure. All AFOs / CAFOs will continue to be required to implement buffer setbacks, conduct proper land application of wastes, maintain records, report all non-compliance events and implement / maintain effective best management practices (BMPs) according to established technical standards and guidelines.

The current rules continue to prohibit discharges of animal wastes, contaminated stormwater runoff, and / or other pollutants from AFOs / CAFOs and continue to provide ADEM with authority to require AFO / CAFO operators to conduct surface water monitoring, to conduct groundwater monitoring, and to close or to take offline treatment structures, as needed. The current rules are consistent with the requirements of applicable State and federal law and their implementing regulations.

Comments / Response to Comments

Comment: A comment was made in support of the Department's implementation of ADEM Admin. Code Ch. 335-6-7 with no need for any modifications or alterations.

Response: No response is warranted.

Comment: ADEM should amend its regulations to aid compliance by regulated entities and increase transparency. The Department's existing CAFO regulations have several limitations related to inspection and recordkeeping. These could be remedied by amending Alabama's CAFO regulations to match those of some of our neighboring states.

Response: The existing regulations contain specific record keeping requirements that allow ADEM to maintain proper regulatory oversight of AFO / CAFO operations in Alabama. ADEM staff review those records during the permitting process and during onsite inspections. ADEM staff can also request the submittal of all records at any time to assess compliance with the applicable regulations.

Comment: Alabama regulations also provide a virtually unlimited ability to waive CAFO regulations on a case-by-case basis, a mechanism that limits accountability and could allow for different compliance requirements for different CAFO operators. None of our surrounding states allow for such wide discretion, and Alabama should consider following their lead, allowing limited exceptions to existing regulations only under well-defined circumstances.

Response: The Director or their designee does have authority and discretion under the current regulations to determine if a facility is a CAFO and is required to register for NPDES or State permit coverage, or if a facility is an AFO, not a CAFO, and is not required to register for NPDES or State permit coverage. The Director or their designee also has authority and discretion to determine if required NRCS and ADEM technical standards and guidelines are being effectively implemented and maintained to prevent and minimize to the maximum extent practicable potential discharges of pollutants in stormwater runoff from the facility and land application areas. However, this authority does not impact the goal of protecting water quality that is afforded under the current regulations.

Comment: Alabama's regulations allow CAFOs that register under the no-discharge state program to self-certify their nutrient management plans (NMPs). This contrasts with regulations in Tennessee and Georgia that require CAFO operators, even those that do not discharge, submit NMPs to their state regulators.

Response: The current regulations require operators to maintain records and other information related to their waste disposal activities, nutrient management plans, and waste management system plans. The current regulations also require that nutrient management plans and waste management system plans be prepared by technical experts with education / experience related to those documents. In addition, ADEM staff review those records during the permitting process and during onsite inspections. ADEM staff can also request the submittal of all records at any time to assess compliance with the applicable regulations

Comment: While permitting for non-discharging CAFOs does not have the same robust anti-backsliding requirements as Federal Clean Water Act programs, the Department should resist any attempts to weaken existing regulations. In particular, relaxing regulations related to land application and disposal of CAFO waste at 335-7-6-.25, -.26 would be cause for concern. Many members of the public have long-standing concerns regarding land application of CAFO waste, septage, and other human and animal waste by-products. We urge the Department to, at a minimum, keep those protections in place.

We also encourage the Department to explore changes that would make more information available to the public regarding land application of CAFO waste. In our experience, much of the public concern is driven by a lack of information regarding the contents of this waste. Any steps that the Department could take to increase transparency around the sources, destination, and disposition of CAFO waste would help assuage these public concerns.

Response: There are no changes being proposed to the current regulations thus there are no concerns related to backsliding. The Department strives for transparency in all programs and information is continuously made available to the public via the web-based e-File system.

Comment: The poultry industry including AFOs / CAFO production and poultry processing plants should be in the best position to identify improvements that can be made to their own waste management practices. Studies should be conducted by the poultry industry and made available to the public. Likewise, studies should be conducted by university poultry departments and the NRCS that suggest areas for improvement in AFO / CAFO waste disposal.

Response: ADEM has no legal authority to require third-party entities to conduct studies and provide the study results to the public and / or specific stakeholder groups. Such considerations should be directed to the relevant agencies and / or entities in question.

Comment: We request ADEM to advise the public of findings and improvement measures which have occurred regarding AFO / CAFO waste disposal in connection with the development of TMDLs in the Tallapoosa watershed and particularly in Emuckfaw Creek. We request ADEM to advise the public of the results of ADEM current monitoring on the streams in the Tallapoosa watershed.

Response: The development of TMDLs and the implementation of the ADEM surface water quality monitoring program is not administered by the AFO / CAFO regulatory program. Information on these topics can be obtained via the biennial Integrated Water Quality Monitoring and Assessment Report and the ADEM Surface Water Quality Monitoring Strategy.

Comment: We oppose further expansion of the poultry industry in the middle Tallapoosa Basin. Specifically, expansion of the processing plant in Ashland, Alabama would cause an unwanted increase in discharge of pollutants into Crooked Creek and then on to the Tallapoosa River. We oppose any new or expanded poultry processing plants, because that extra processing capacity would be expected to increase numbers of AFO / CAFO poultry production facilities in the region.

Response: ADEM has no legal authority on the decisions to locate any specific industry on any specific piece of property. A function of local governments is the determination of how land within their jurisdictions is best utilized. Individuals or organizations should contact their local county or municipal government for assistance with siting or zoning issues.

Likewise, ADEM has no legal authority to prevent industries from expanding or reducing their daily operations. The current regulations specifically prohibit the discharge of wastes / pollutants to ensure the protection of water quality.

Comment: Poultry farmers are urged to develop improved best management practices and clean water measures in the middle Tallapoosa watershed. We are all urged to identify what we can do to improve our own best management practices and then to act upon our own resolve.

Response: ADEM works closely with the Soil and Water Conservation Committee, the Natural Resources Conservation Service, the Alabama Department of Agriculture and Industries, the Alabama Cooperative Extension System, and other agencies to identify areas of concern and provide education / outreach opportunities. The current regulations will continue to provide stringent protections and impose effective requirements that are protective of water quality.

Comment: The 2024 TMDL water quality improvement process presents an important opportunity for ADEM and all clean water advocates to participate in improving water quality in the Tallapoosa watershed, particularly regarding the practices of AFOs / CAFOS and their regulation by ADEM.

Response: While the development of TMDLs and the implementation of the ADEM Surface Water Quality Monitoring Program is not administered by the AFO / CAFO regulatory program, the current regulations specifically prohibit the discharge of wastes / pollutants and provide a regulatory framework that is protective of water quality.

Comment: The State of Alabama has identified the entire reach of the Emuckfaw Creek drainage (65.7 square miles) as impaired for pathogens. Its use classification is *Fish and Wildlife* (FW). Emuckfaw Creek was placed on the Alabama 303(d) list in 2018 based on data collected in 2016. Additional data collected by ADEM in 2023 confirmed the pathogen impairment and provided the basis for TMDL development. The sources of impairment on Emuckfaw Creek listed by ADEM are animal feeding operations (AFO / CAFOs) from our poultry industry and pasture grazing. These industries appear to be growing in the Tallapoosa River basin.

The comment highlighted various statements in the ADEM draft 2024 TMDL related to NPDES-regulated stormwater sources in the Emuckfaw Creek watershed as well as current and future AFOs / CAFOs receiving a waste load allocation of zero.

The comment also urged poultry farmers to help develop improved best management practices and clean water measures to prevail throughout the middle Tallapoosa watershed and noted there are far more impaired streams on the 303(d) list than can be selected by ADEM staff for the TMDL process in any given year. It was noted that the 2024 TMDL water quality improvement process presents an important opportunity for ADEM and all clean water advocates to participate in improving water quality in the Tallapoosa watershed, particularly regarding the practices of AFOs / CAFOS and their regulation by ADEM.

Response: While the development of TMDLs and the implementation of the ADEM Surface Water Quality Monitoring Program is not administered by the AFO / CAFO regulatory program, the current regulations specifically prohibit the discharge of wastes / pollutants and provide a regulatory framework that is protective of water quality.

ADEM Review

The current regulations provide stringent protections for water quality and impose a regulatory framework that is protective of all State waters. The current regulations require the implementation of best management practices, the development of Nutrient Management Plans / Waste Management System Plans, and technical standards related to buffers, land application, and animal mortality that ensure the operation of AFOs / CAFOs do not result in negative impacts to water quality.

Recommendation

At this time, ADEM does not recommend any changes to ADEM Admin. Code Ch. 335-6-7.