ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT WATER QUALITY PROGRAM - FIELD OPERATIONS DIVISION ADMINISTRATIVE CODE

CHAPTER 335-6-7
NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) BEST MANAGEMENT PRACTICES, 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)

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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.

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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 "[t]he 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 "[a]ll 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.

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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.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

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.
Author: Richard Hulcher, Steven Jenkins
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 to 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **Amended:** Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

335-6-7-.05 Reserved.
Author:
Statutory Authority:
History:

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.

Author: Richard Hulcher

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.

History: Amended: Filed February 24, 1999; effective March 31, 1999.

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.

Author: Richard Hulcher, Steven Jenkins
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **Amended:** Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

335-6-7-.08 Reserved.
Author:
Statutory Authority:
History:

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".
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

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.

Author: Richard Hulcher, Steven Jenkins

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

335-6-7-.11 Registration For Alternate Non-NPDES State Permit Coverage.

(1) CAFOs that do not discharge and/or propose to discharge to groundwater and/or surface waters as determined by the Director or his/her designee and do not register for NPDES permit coverage shall register for State permit coverage at least every 5-years.

(2) Registration for State permit coverage does not provide NPDES permit coverage and NPDES permitting regulatory requirements do not apply to facilities that obtain State permit coverage.

(3) New and expanding AFOs/CAFOs may register temporarily under the annual NPDES Registration for the duration of construction and land disturbance to obtain NPDES permit coverage to satisfy NPDES construction stormwater permitting requirements, and then convert their NPDES permit coverage to the State permit coverage once construction and land disturbance is complete and all disturbed areas are permanently stabilized and/or revegetated.

(4) All technical, operational, and administrative requirements required by ADEM Admin. Code Ch. 335-6-7 apply to facilities that obtain State permit coverage unless specifically waived by this rule and/or waived in writing by the Director or his/her designee:

(a) Annual QCP inspection is not required to be conducted.

(b) Annual QCP certification is not required to be prepared and/or submitted.

(c) Continuing education and training is not required to be completed and/or submitted.

(5) AFOs may voluntarily request State permit coverage if they choose for any reason and for any desired length of time not to exceed 5-years.

(6) All AFOs/CAFOs are considered to be permitted by State rule as a State permitted facility if they comply with rule requirements applicable to State registered facilities.

(7) For each initial registration for State permit coverage and each 5-year re-registration the registrant shall:

(a) Submit to the Department a QCP certification based on the results of an inspection performed by a QCP within the previous six (6) months.

(b) Certify that no discharges of pollutants have occurred to groundwater and/or surface waters since the previous registration for State permit coverage or previous registration for NPDES permit coverage.

(c) Certify that required facility/structure buffers/set-backs have been implemented since the previous registration for State permit coverage or previous registration for NPDES permit coverage.

(d) Certify that required land application buffers/setbacks have been implemented since the previous registration for State permit coverage or previous registration for NPDES permit coverage.

(e) Certify that a comprehensive WMSP has been prepared, is current, and is being implemented.

(f) Certify that required detailed records have been retained since the previous registration for State permit coverage or previous registration for NPDES permit coverage.

(8) The ADEM General Permit Fee, Chapter 335-1-6 - Fee Schedule D, Water Permits, shall be charged for State Registration processing.
Author: Scott Hughes
Statutory Authority: Code of Ala. 1975, §§22-22-1 thru 22-22-14; §§22-22A-1 thru 22-22A-16 et seq., as amended.
History: New Rule: Published December 31, 2020; effective February 14, 2021.

335-6-7-.12 Registration Fees For Concentrated Animal Feeding Operations (CAFOs).

(1) The registrant of a CAFO shall pay an initial and annual Registration fee according to Chapter 335-1-6 - Fee Schedule D, Water Permits/Registration, CAFO. The total registration fee amount shall be determined annually by the registrant according to the Fee Schedule and approved by the Director or his designee. Payment of the appropriate fee shall be due with submittal of the initial and each subsequent annual NOR.

(2) The registrant of a CAFO shall pay a modification fee according to Chapter 335-1-6 - Fee Schedule D, Water Permits/ Registration, CAFO. The registration modification fee amount shall be determined by the registrant from the Fee Schedule D and be approved by the Director or his designee. Payment of the appropriate modification fee shall be due with submittal of the

request to modify the existing NOR filed with the Department. A modification fee is required if there is:

(a) A change of ownership or name of registrant;

(b) A change in operational control of the facility;

or

(c) Any increase in the number of animal units at any time which is sufficient to place the facility in a higher fee category.

(d) Significant change in waste treatment, handling or disposal.

(3) A "Greenfield" fee required by Chapter 335-1-6 shall not be required provided the registrant submits the continuing education certification(s) required in Rule 335-6-7-.18(1) and (2) with the initial Registration and/or each annual Registration.

(4) The registrant shall comply with all applicable fee requirements for the operation of this facility, as specified in Chapter 335-1-6. Failure to promptly remit all required fees, certifications, or other information required by the Director shall be grounds for the Director to initiate enforcement action and/or terminate Registration under this Chapter.

(5) Any AFO that is not defined by Rule as a CAFO or is not designated as a CAFO by the Director that wishes to be registered shall pay the applicable fee according to Chapter 335-1-6.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

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.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

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.
Author: Richard Hulcher, Steven Jenkins
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 to 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

335-6-7-.15 Reserved.
Author:
Statutory Authority:
History:

335-6-7-.16 Access To And Availability Of Records, Reports Or Information.

(1) Any owner/operator of an AFO shall, upon request of a duly authorized representative of the Department, permit the representative, at all reasonable times, access to all records concerning the acquisition, storage, handling, and transport of regulated chemicals, compounds, and pollutants and permit the representative to copy said records.

(2) Except as provided by Rule 335-6-6-.07, any records, reports, or information obtained under this Chapter may be made available to the public by the Department. The owner/ operator shall prove to the satisfaction of the Director or his designee that records, reports or information, or a particular part thereof to which the Department has access under this Chapter, if made public, would divulge production or sales figures or methods, processes or production unique to such owner/operator or would otherwise tend to adversely affect the competitive position of such owner/ operator by revealing trade secrets. The Department may consider such record, report, or information or particular portion thereof, confidential. Nothing in this paragraph shall be construed to prevent disclosures of such report, record, or information to federal or State representatives as necessary for purposes of administration of any federal or State laws or when relevant to proceedings under this Chapter. Information concerning the presence or concentration of substances in waste, wastewater, soil, or State waters shall not be considered confidential by the Department.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

335-6-7-.17 Entry And Inspection Of Facilities.

(1) Any owner/operator of an AFO shall upon request of the Director or his designee upon the presentation of credentials and other documents as may be required by law, permit Department representatives to enter, at all reasonable times, property and buildings at the facility and allow the representative to inspect facilities and equipment, review records, to conduct monitoring and sampling, and to:

(a) Excluding the personal domicile of the owner/operator, enter upon the premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this Chapter. The owner/operator shall provide the records upon request at an alternate location acceptable to the Department;

(b) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this Chapter;

(c) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this Chapter; and

(d) Sample, inspect, or monitor, at reasonable times, for the purposes of assuring compliance with this Chapter or as

otherwise authorized by the CWA and/or AWPCA, any substances or parameters at any location.

(2) Where bio-security may be a concern for any specific structure or breeding area, the registrant, with consent by the Department, shall provide alternate access acceptable to the Department that does not require bio-security to meet with facility personnel, and to inspect/evaluate waste management systems, land application sites, record storage areas, and enter other areas deemed necessary by the Director or his designee.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

335-6-7-.18 Continuing Educational And Training Requirements.

(1) Except as provided in Rule 335-6-7-.18(3), commencing effective April 1, 1999, all managing owners/operators and onsite supervisors of proposed or existing registered facilities and proposed or existing CAFO operations must obtain certification of satisfactory completion of formal education or training in the areas of general BMPs, comprehensive waste/ wastewater management, land application, nutrient budgeting, dead animal disposal, and other appropriate areas. Proof of satisfactory completion of up to sixteen (16) hours of approved group or individualized initial training and education must be submitted with the NOR or no later than one (1) year after the effective date of the initial Registration unless extended by the Director or his designee for cause. The registrant will be informed of, and the Department shall approve initial training requirements including, but not limited to, appropriate curricula, course content, course length, any participant testing, evaluation of the effectiveness/ applicability of the training, and total hours of training required.

(2) Except as provided in Rule 335-6-7-.18(3), commencing effective April 1, 1999, all managing owners/operators and onsite supervisors of all registered facilities and unregistered existing CAFO operations, which have been in operation for no less than eighteen (18) months, must obtain certification of satisfactory completion of annual refresher training in the areas of general BMPs, comprehensive waste/ wastewater management, land application, nutrient budgeting, dead animal disposal, and other appropriate areas as described in and in addition to the educational requirements required in Rule 335-6-7-.18(1). Proof of satisfactory completion of up to eight (8) hours of annual approved group or individualized refresher training and education must be submitted with each annual re-registration NOR unless extended by the Director or his designee for cause. The registrant

will be informed of, and the Department shall approve refresher-training requirements including, but not limited to, appropriate curricula, course content, course length, any participant testing, evaluation of the effectiveness/applicability of the training, and total hours of training required.

(3) An owner/operator has the option to submit the additive "Greenfield" fee with the initial registration and each annual registration as provided in Chapter 335-1-6 – Fee Schedule D, Water Permits/Registration, CAFO so that the Department can perform a comprehensive facility evaluation prior to approval of the registration request, in lieu of submitting the continuing education certification(s) required in Rule 335-6-7-.18(1) and (2).

(4) Failure to obtain and submit certification of the prerequisite and annual training and education, or pay the additive Greenfield fee as provided in Rule 335-6-7-.18(3) shall be deemed a violation of this Chapter.

(5) Where employees are responsible for activities which relate to Rule compliance, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste/wastewater disposal. Training shall address such topics as proper land application of wastes, nutrient budgeting, proper operation and maintenance of the facility, good housekeeping and chemical/fuel management practices, proper dead or diseased animal disposal, proper waste product disposal, necessary record keeping requirements, emergency response in case of power failure, system failure, or unpermitted discharge, spill response and clean-up, and other topics required by the Director or his designee. The registrant is responsible for determining the appropriate training frequency for different levels of personnel expertise and the pollution prevention plan shall identify periodic dates for such training.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

335-6-7-.19 Reserved.
Author:
Statutory Authority:
History:

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.

(5) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO confinement buildings with a liquid waste/wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 1,320 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(a) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO dry waste confinement buildings and dry waste storage/containment and treatment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 330 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(b) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a liquid waste/wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 660 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(c) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a dry waste handling system or dry waste storage/containment and treatment

structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 165 feet of the nearest existing occupied dwelling, church, school, hospital, or park.

(6) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO confinement buildings with a liquid waste/wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 500 feet of any property line.

(a) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), AFO dry waste confinement buildings and dry waste storage/containment and treatment structures for new operations that are initially constructed or commence initial operation after April 1, 1999 shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 165 feet of any property line.

(b) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a liquid waste/ wastewater handling system, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 500 feet of any property line.

(c) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings with a dry waste handling system or dry waste storage/containment and treatment structures constructed after April 1, 1999 at existing AFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations

promulgated pursuant thereto, but in no case shall be constructed within 165 feet of any property line.

(7) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), any new or additional confinement buildings, waste/wastewater handling system, waste/wastewater transport structures, waste/wastewater treatment structures, settling basins, lagoons, holding ponds, sumps, or pits, and other agricultural waste containment/treatment structures constructed after April 1, 1999 shall be located to 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, but in no case shall be constructed within 100 feet of any streams including, but not limited to, intermittent streams, ponds, lakes, springs, sinkholes, or PWS, ONRW, or OAW classified/designated waters, 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 100 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.

(8) Except as provided in Rule 335-6-7-.20 (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, and notwithstanding with provisions of paragraphs (5), (5)(b), (6), (6)(b) of this Rule, any new or additional confinement buildings with a liquid waste/wastewater handling system, or any liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures where construction commenced on or after December 1, 2000 at new or existing AFO/CAFO facilities shall be located to meet or exceed NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AAPCA, AWPCA, CWA, and regulations promulgated pursuant thereto, but in no case shall be constructed closer than 500 feet to an existing offsite potable water well, 200 feet to a perennial non-headwater watercourse, or PWS, ONRW, or OAW classified/designated waters and in no case shall be constructed closer than the distances from property lines as specified below.

Animal Units (AU)	**Minimum Buffer Distance From Property Line**
Less than 1,000	500 feet
1,000 - 2,499	1,320 feet
2,500 - 3,999	2,640 feet
4,000 and greater	5,280 feet

(9) Except as provided in Rule 335-6-7-.20(8), (9), (10), (11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, any new or additional wells installed after December 1, 2000 as defined in 335-6-7-.02 shall be located, operated, and

maintained to meet or exceed applicable requirements of ADEM Administrative Code Chapter 335-9, NRCS technical standards and guidelines, the requirements of this Chapter, and the requirements of the AWPCA, and regulations promulgated pursuant thereto, but in no case shall be constructed within 100 feet of any confinement buildings, waste/wastewater handling system, waste/wastewater transport structures, waste/wastewater treatment structures, settling basins, lagoons, holding ponds, sumps, or pits, and other agricultural waste containment/treatment structures. Buffer distances in excess of 100 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 groundwater resources on an individual facility basis.

(10) AFO confinement buildings, dry waste storage/containment and treatment structures, liquid waste storage settling basins, lagoons, holding ponds, sumps, or pits, and other animal liquid waste containment structures shall be located to 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.

(11) AFO operations existing as of April 1, 1999 and proposing to construct/expand an animal waste containment structure in order to prevent waste/wastewater discharge or run-off to waters of the State may be considered exempt from location buffer distances specified in this Chapter by the Director if the Director or his designee determines in writing that the additional/expanded structures are necessary to assure the protection of water quality and that there is not a feasible location alternative.

(12) Location buffer distances do not apply to confinement buildings, settling basins, holding ponds, sumps or other animal waste containment structures existing prior to April 1, 1999 nor do they apply to structures existing as of April 1, 1999 when a registration modification is required due to a change in ownership.

(13) Location buffer distances from an existing occupied dwelling, church, school, hospital, park, or property line shall not apply if the existing occupied dwelling, church, school, hospital, or park is owned by owners/operators of the animal waste management system, if the adjoining property owner consents in writing through a dated, notarized document, if the adjoining property contains a deed restriction notifying the owner of the possibility of nearby AFOs, or if the area is specifically zoned for the construction and operation of CAFOs by the controlling elected governmental authority.

(14) Location buffer distances do not apply to AFO waste/ wastewater storage/treatment structures in existence, or where full site preparation is complete and utility infrastructure is

installed and is documented in writing, as of April 1, 1999, or to AFO waste/wastewater storage/treatment structures constructed in accordance with the requirements of this Chapter after April 1, 1999 that are completed, replaced, repaired, modernized, reconstructed, and/or refurbished on the pre-existing site/ location according to NRCS technical standards and guidelines to pre-existing size and operational status provided the resultant waste/wastewater storage/treatment structure is no closer to the nearest existing occupied dwelling, church, school, hospital, park, intermittent streams, ponds, lakes, springs, or sinkholes, or PWS, ONRW, or OAW classified/designated waters, wells, and water supplies, or property line than it was prior to the work on the waste/wastewater storage/treatment structure commencing.

(15) Location buffer distances do not apply to AFO confinement buildings in existence, or where full site preparation is complete and utility infrastructure is installed and is documented in writing, as of April 1, 1999, or to AFO confinement buildings constructed in accordance with the requirements of this Chapter after April 1, 1999 that are completed, replaced, repaired, modernized, reconstructed, and/or refurbished on the pre-existing site/location to current industry design standards according to NRCS technical standards and guidelines provided the resulting confinement building is no closer to the nearest existing occupied dwelling, church, school, hospital, park, intermittent streams, ponds, lakes, springs, or sinkholes, or PWS, ONRW, or OAW classified/designated waters, wells, and water supplies, or property line than it was prior to the work on the confinement building commencing.

(16) Location buffer distances do not apply to confinement buildings, settling basins, holding ponds, sumps or other animal waste containment structures under significant, active construction in accordance with the requirements of this Chapter as of April 1, 1999 provided all earthwork and construction/ building is complete as of August 1, 1999 or an alternate completion date approved by the Director or his designee in writing, and the facility is ready to be operated according to NRCS technical standards and guidelines and the requirements of this Chapter.

(17) Unless required by the Director or his designee in writing as conditions warrant on an individual facility, programmatic, or categorical basis to ensure the protection of water quality and minimization of odors to the maximum extent practicable, the requirement for AFOs to maintain buffer distances contained in this Chapter shall not apply to right-of-ways (ROWs) or easements for energy transmission or transportation (e.g. power lines, gas or water pipelines, roads, etc.). The Director or his designee may exempt in writing as conditions warrant on an individual facility, programmatic, or categorical basis the requirement to maintain buffer distances contained in this Chapter for personal pets, veterinary offices, animal hospitals, municipal zoos, etc. small

concentrations or collections of animals, or confined animals, and animals subject to specific zoning or siting restrictions by a municipality or other governmental body.

(18) A subsurface investigation for earthen holding pond, pit, sump, treatment lagoon, or other earthen storage/ containment structure suitability and liner requirements shall be a component of the system designee and shall be performed by the owner/ operator under the supervision of and certified by a QCP, and may consist of auger holes, dozer pits, or backhoe pits at a depth to the extent necessary to determine adequacy of the specific site for waste storage. The subsurface investigation must extend at least two feet below the planned bottom grade. Subsurface investigation in soils underlain by the Demopolis or Mooreville Chalk formations of the Selma Chalk group in the Blackland Prairie major land resource area may terminate at a depth of 1 foot below the surface of the chalk [Reference: (1) Geologic Map of Alabama, 1988, Geologic Survey of Alabama, Michael W. Szabo and Charles W. Copeland, Jr., and (2) Land Resource Regions and Major Land Resource Areas of the United States, USDA-NRCS, SCS, Agricultural Handbook 296, MLRA 135, Alabama, Mississippi, and Arkansas Blackland Prairie]. A detailed, comprehensive geologic investigation for suitability of the site that meets or exceeds NRCS technical standards and guidelines must be performed for proposed sites in karst topography. In those situations where testing performed during the initial on-site subsurface investigation is not conclusive, the owner/operator shall conduct additional subsurface investigation as necessary and provide documentation certified by a QCP to ensure conformance with NRCS technical standards and guidelines or other additional standards required by the Director or his designee to ensure the protection of water quality. Unless relevant information is available to the contrary, compliance with this provision during design and construction of the facility will normally demonstrate that no hydrologic connection exists at the particular site.

(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.

(21) All AFOs shall implement effective management procedures to the maximum extent practicable to keep dry wastes under roof or effective cover and to minimize manure from the facility coming into contact with stormwater or other water or wastewater source (other than de minimus inputs as determined by the Department) at any time during production, handling/spillage, storage, treatment, transport, or other activity prior to proper land application which meets or exceeds NRCS technical standards and guidelines.

(22) Unless an alternate date is approved in writing by the Director or his designee, after April 1, 1999, all AFO lagoons and other waste storage/treatment facilities, separately or collectively/cumulatively, shall be designed, constructed, operated, and maintained to ensure sufficient storage volume to contain all dry/wet waste and wastewater, to contain contaminated stormwater resulting from runoff generated by a 25-year, 24-hour storm event, to contain uncontaminated stormwater (that cannot be separated/segregated from contaminated runoff) resulting from runoff generated by a 25-year, 24-hour storm event, and to maintain an additional minimum safety margin of at least 12 inches freeboard to prevent discharges to groundwater or surface water. Operating storage volume shall be sufficient to contain/ retain all dry/wet waste and wastewater and contaminated stormwater during extended periods when waste/wastewater cannot be properly land applied during the growing season at agronomic rates due to adverse climatological or seasonal conditions (generally late fall, winter, and early spring months).

(23) All AFOs shall implement effective management procedures at all times to properly collect, manage, store, treat, transport, and dispose domestic sewage and domestic wastewater onsite or offsite in a manner that meets or exceeds NRCS technical standards and guidelines and the requirements of the Department and the ADPH.

(24) Unless extended in writing by the Director or his designee, no later than January 1, 2003, all AFOs and CAFOs in the North Alabama Area as designated in NRCS technical standards and guidelines shall implement provisions to provide for a minimum of 180 days waste/wastewater storage/retention/holding capacity and/ or Department accepted management procedures that meet or exceed NRCS technical standards and guidelines to ensure effective water quality protection during periods when land application or other approved disposal alternatives are not available. After December

1, 2000, new or expanding AFOs and CAFOs in the North Alabama Area shall implement this 180 day permanent/temporary storage requirement prior to commencing initial operation and/or expanded operations.

(a) Unless extended in writing by the Director or his designee, no later than January 1, 2003, all AFOs and CAFOs in the South Alabama Area as designated in NRCS technical standards and guidelines, shall implement provisions to provide for a minimum of 120 days waste/wastewater storage/ retention/holding capacity and/or Department accepted management procedures that meet or exceed NRCS technical standards and guidelines to ensure effective water quality protection during periods when land application or other approved disposal alternatives are not available. After December 1, 2000, new or expanding AFOs and CAFOs in the South Alabama Area shall implement this 120 day permanent/temporary storage requirement prior to commencing initial operation and/ or expanded operations.

(25) After December 1, 2000, construction of new or expanded manure storage pits and/or new waste/wastewater storage ponds at new, expanding, or existing AFOs or CAFOs are prohibited unless the owner/operator submits in writing an affirmative demonstration acceptable to the Director or his designee that the use of new or expanded manure storage pits and/or new waste storage ponds will be protective of water quality and will provide for the minimization of odors to the maximum extent practicable. Approval of the use of new or expanded manure storage pits and/or new or expanded concentrated waste storage ponds, if granted, shall be made in writing by the Director or his designee.

(26) Eligibility for alternate or modified buffer requirements for new or expanding AFO facilities as provided in Rule 335-6-7-.20 (11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, where construction commenced, is continuing, or resumes after December 1, 2000, must be approved in writing by the Director or his designee. Adequate, dated records documenting eligibility for alternate or modified buffer requirements claimed or applied by an AFO owner/operator for new or expanded facilities where construction was ongoing as of April 1, 1999 or construction commenced after April 1, 1999, and construction was completed prior to December 1, 2000, as provided in Rule 335-6-7-.20 (11), (12), (13), (14), (15), (16), (17), and (27), or other applicable rules, must be witnessed or notarized and submitted to the Department prior to June 1, 2001.

(27) Unless otherwise approved by the Director or his designee for cause in writing, notwithstanding any other provision of this Chapter, existing or previously constructed/operated AFOs or AFOs constructed after April 1, 1999, that are inactive, idle, or closed, that have not registered and do not confine greater than 50 animal units during any 36 month period will not be considered

existing facilities, but are/will be considered as expanding facilities for the application of buffer requirements and other requirements of this Chapter at the time animal confinement greater than 50 animal units resumes.
Author: Richard Hulcher, Steven Jenkins
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 to 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

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.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

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.
Author: Richard Hulcher

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

335-6-7-.23 Reserved.
Author:
Statutory Authority:
History:

335-6-7-.24 Facility Closure.

(1) Should a CAFO or registrant cease operation, the owner/ operator shall submit to the Department a closure/ rehabilitation plan for the waste system storage/treatment structure(s) at least thirty (30) days prior to the final day of operation. This plan shall be prepared by a QCP to 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 additional conditions required by the Director or his designee to ensure the protection of water quality, and shall be submitted to the Department in a format acceptable to Director or his designee. The closure plan, at a minimum, shall address maintenance of the facility until proper closure is completed and certified by a QCP and shall include a proposed schedule for closure not to exceed 180 days unless an extension is granted in writing by the Director or his designee.

(2) The owner/operator shall comply with all applicable requirements of this Chapter until such time as the facility closure plan is approved by the Department.

(3) The approved closure plan shall be completed according to the approved schedule, unless an alternate date is approved in writing by the Director or his designee.

(4) Once closure is completed, the owner/operator shall submit to the Department certification from a QCP that the facility has in fact been properly closed in accordance with the closure plan and the requirements of this Chapter.

(5) Failure to fully implement the closure plan as required by this Chapter may subject the owner/operator to enforcement action to include, but not be limited to, termination of existing registrations and denial of future requests for registration.

(6) Where the owner/operator or registrant of the facility is unable to ensure proper closure or environmental remediation of the facility as required by this Rule due to owner/operator death,

liquidation bankruptcy, natural disaster, animal disease outbreak, etc., each landowner of the property where the facility is located and each person or entity (if different from the owner/operator) who owns or has an ownership interest in the facility, shall submit and implement the Closure Plan required by this Rule or shall submit and implement an effective environmental remediation plan prepared by a QCP to 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 additional conditions required by the Director or his designee to ensure the protection of water quality, and shall be submitted to the Department in a format acceptable to Director or his designee.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

335-6-7-.25 Discharge Prohibitions And Waste Disposal Requirements.

(1) Discharge Prohibitions

(a) This Chapter has as its stated purpose the prevention of discharges of pollution to waters of the State from AFOs, and contains conditions which may be broader in scope than federal rules. Except as specifically provided otherwise by this Chapter, discharge of any wastewater from an AFO to waters of the State at any time is prohibited, except as a direct result of periods of chronic or catastrophic precipitation or weather conditions as determined by the Director or his designee, including precipitation equivalent to or in excess of the 25-year, 24-hour storm event, provided:

1. The Department is properly notified and discharges are properly sampled as required by Rule 335-6-7-.31; and

2. Appropriate, effective waste management and land application practices that meet or exceed NRCS technical standards and guidelines have been fully implemented and regularly maintained prior to the causative precipitation event; and

3. The discharge is unavoidable after the AFO owner/operator has taken action to the maximum extent possible to prevent discharge(s); and

4. The owner/operator takes action to the maximum extent possible to terminate discharge(s) as soon as possible; and

5. The owner/operator takes action to the maximum extent possible to mitigate any impacts caused by the discharge(s) as soon as possible.

(b) No flowing surface waters or waters of the State (e.g. rivers, streams, canals, etc.) shall come into direct contact with the animals confined or concentrated in the facility or waste generated by the facility except as provided by NRCS technical standards and guidelines, the requirements of this Chapter, the requirements of the AWPCA, CWA, and regulations promulgated pursuant thereto.

(c) Uncontaminated drainage or runoff (which does not come into contact with waste products, animals, or other pollutants) should be segregated and excluded from wastewaters flowing to the animal waste control structures (settling basins and holding basins) to the maximum extent practicable unless specific provisions are made in a WMSP for the addition of water to aid land application or reduce odors. Failure to segregate uncontaminated runoff from other wastewater shall not be a valid defense to a discharge violation under this Chapter. Diversion ditches, dikes, berms, terraces or other such structures designed to carry uncontaminated runoff peak flows expected at times when the 10-year, 24-hour rainfall event occurs are commonly constructed for this purpose.

(2) The following technical requirements and management practices are applicable to the operation and maintenance of waste control facilities (settling basins, holding ponds, sumps, lagoons, tanks, etc.). Documentation supporting these requirements shall be included in the WMSP that meets or exceeds NRCS technical standards and guidelines, and as approved by the Department.

(a) Waste control facilities must be constructed, maintained and operated so as to retain all contaminated rainfall from open lots and associated areas, process generated wastewater, and all other wastes from the AFO which will enter or be stored in the retention structure. Calculations must also include allowances for surface retention, infiltration, and other site-specific factors. For purposes of this Chapter, land application sites are not included in the definition of waste control facilities.

(b) New, modified, or expanded AFO facilities shall not be built in or over a surface water of the State or in or over specific sites with direct hydrologic connection to groundwater.

(c) Waste/wastewater operating levels in the waste control facilities shall be in accordance with the approved WMSP that meets or exceeds NRCS technical standards and guidelines.

(d) Net freeboard (margin of safety) on any settling basin, lagoon, waste storage pond, sumps, and holding pond(s) shall meet or exceed NRCS technical standards but in no case shall be less than 12 inches.

(e) Solid material (sludges, manure, or other pollutants) accumulated in the waste control facilities shall be removed as necessary according to the approved WMSP to maintain the facilities' design treatment and storage volume. Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed or land applied in accordance with the requirements of this Chapter and in a manner so as to prevent pollutants from being discharged to waters of the State.

(f) All basin, lagoon, and waste storage pond/sump liners shall be designed, constructed, and maintained to prevent leaking and control seepage in a manner that meets or exceeds NRCS technical standards and guidelines. Any leaks or observed seeps shall be documented and reported to the Department as required by this Chapter and appropriately corrected. Any discharge from the waste storage, treatment, or transport system, including but not limited to, discharges caused by overflow, observed or evident leaks or seeps, conveyance structure failure, broken pipe, broken pump or other equipment, etc. shall be reported to the Department in accordance with Rule 335-6-7-.31.

(g) Waste/wastewater handling/storage/treatment/ retention facilities, confinement buildings, holding pens, etc. may not be located in the 100-year flood plain unless the facility is constructed, maintained, and effectively protected from inundation and damage that may occur during that flood event.

(h) Waste handling, treatment, and management shall not create an environmental or a public health hazard; shall not result in the contamination of drinking water; and shall not cause or contribute to a violation of any Water Quality Standard(s).

(i) The owner/operator shall take all reasonable precautions to prevent the discharge of waters which have been, or could be contaminated by pesticides. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any pollutant from such material from entering the waters of the State and according to applicable State and federal law.

(j) Confinement buildings, settling basins, lagoons, waste storage ponds, sumps, and other animal waste control structures shall comply with the set-back requirements of this Chapter in order to ensure the protection of water quality.

(k) Collection, storage, handling, transport, and disposal of solid animal waste shall be managed in accordance with recognized practices of good agricultural management and as authorized by the requirements of this Chapter.

(l) Appropriate measures necessary, as documented in the facility's SPCC plan, to prevent spills and to clean up spills of any toxic pollutant shall be fully implemented. Where potential spills can occur, materials handling procedures and storage shall be specified. Procedures for immediate cleanup/ remediation of spills shall be described in the training plans and the necessary equipment to implement a clean up shall be made available to facility personnel.

(m) AFO facilities located in the drainage area of a municipal separate storm sewer system (MS4) shall comply with applicable requirements in the storm water management program developed under an NPDES permit issued to the MS4. Failure to comply with this requirement is a violation of this Chapter and may subject the AFO owner/operator to enforcement action.

(n) AFO facilities discharging through a publicly/ privately owned treatment works (POTW) shall comply with applicable requirements in any NPDES permit issued to the POTW receiving the AFO facility discharge. Failure to comply with this requirement is a violation of this Chapter and may subject the AFO owner/operator to enforcement action.

(o) Facilities shall not expand operations, either in size or numbers, change land application procedures or areas, or implement significant change in waste treatment, handling or disposal as determined by the Director or his designee, unless the approved WMSP has been revised to meet or exceed NRCS technical standards and guidelines for the expanded/modified operations, and implementation of the approved, revised WMSP has been certified by the QCP.

(p) Facilities shall not expand operations, either in size or numbers, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations. Facilities shall not expand operations, either in size or numbers, unless adequate land is available and has been secured to properly land apply waste/wastewater for the existing operation and any additional waste/wastewater that will be generated by the expanded operations, or unless waste/wastewater disposal and land application responsibilities are properly contracted in writing to a valid CAWV.

(q) Waste and wastewater storage/treatment facilities, retention facilities, holding pens, or waste/wastewater disposal sites shall be located in accordance with the approved plans and specifications designed and implemented

that meet or exceed NRCS technical standards and guidelines, and as accepted by the Department.

(3) All influent to containment structures shall be composed entirely of process wastewaters and contaminated stormwater from the proper operation and maintenance of the AFO and any precipitation from the AFO areas. The disposal of any other materials or pollutants into the containment/treatment structures or waste management system that is not approved by the Director or his designee, is prohibited.

Author: Richard Hulcher

Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 t0 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.

History: Amended: Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

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 extend 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.

Author: Richard Hulcher, Steven Jenkins
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 to 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.
History: **Amended:** Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

335-6-7-.27 Reserved.
Author:
Statutory Authority:
History:

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.

(c) Initial written documentation of inspection by a PE registered in the State of Alabama or a QCP under the direct supervision of the PE, and certification by the PE that all new and existing embankments, dams, dikes, ditches, or berms associated with lagoons or waste storage ponds/sumps or other structural controls identified by the Director or his designee have been constructed in accordance with accepted engineering practices and in such a manner that meets or exceeds NRCS technical standards and guidelines. Records shall include

dates for each inspection, a log of the findings and any action taken as a result of such inspections, and shall be signed by the person(s) performing the inspection/evaluation.

(d) Written provisions for inspection by a PE registered in the State of Alabama or a QCP under the direct supervision of the PE, and certification/evaluation by the PE at least once every five years that all embankments, dams, dikes, ditches, or berms associated with lagoons or waste storage ponds/ sumps or other structural controls identified by the Director or his designee have been maintained in accordance with accepted engineering practices and in such a manner that meets or exceeds NRCS technical standards and guidelines. 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.

(e) A schedule and procedures for lagoon or waste storage pond/sump dewatering must be retained at the facility. A date log indicating weekly inspections of the wastewater level in any lagoon or waste storage pond/sump shall be maintained, and shall be signed by the person(s) performing the inspection/ evaluation. Owners/operators using ponds/sumps or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste systems, shall maintain in their retention facility sufficient storage volume to contain all dry/wet waste and wastewater, to contain contaminated stormwater runoff from a 25-year, 24-hour event, to contain uncontaminated stormwater (that cannot be separated/segregated from contaminated runoff) from a 25-year, 24-hour storm event, and to maintain an additional 12 inch freeboard safety margin. The owner/operator shall restore storage volume for retention of all waste/wastewater, contaminated runoff from the 25-year, 24-hour event, and non segregated, uncontaminated runoff from the 25-year, 24-hour event as soon as possible after any rainfall event or accumulation of wastes or process generated wastewater which reduces such storage volume, weather permitting. Equipment capable of dewatering the wastewater lagoon or storage pond/ sump shall be available whenever needed to restore the required operating storage volume and freeboard.

(f) A permanent marker (measuring device), visible from the top of the embankment, shall be maintained in the retention structure to show the volume/water levels for normal operation of the retention structure according to the approved animal waste system management plan for containing all dry/wet waste and wastewater, for containing contaminated stormwater resulting from runoff generated by a 25-year, 24-hour storm event, for containing uncontaminated stormwater (that cannot be separated/segregated from contaminated runoff) resulting from runoff generated by a 25-year, 24-hour storm event, and

show the additional 12 inches of safety margin freeboard within the containment ponds/sumps or lagoon.

(g) Where a liner is installed in a retention structure in accordance with the requirements of this Chapter, the owner/operator shall maintain the liner to prevent hydrologic connection to groundwater or surface waters. Provisions must be implemented to prevent damage from grazing animals through the use of fences or other protective devices. No trees shall be allowed to grow on or near the structure within the potential distance of the root zone. Any mechanical or erosive structural damage to the liner should be immediately evaluated by an NRCS representative or PE, or appropriate QCP, but in no case later than 3 days after the damage, or an alternate schedule approved by the Department. All documentation on inspection and maintenance of the liner shall be kept at the facility.

(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.

Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 to 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999. **Amended:** Filed October 26, 2000; effective November 30, 2000.

335-6-7-.29 Preventive Maintenance.

CAFO owners/operators and registrants shall develop, maintain and implement an appropriate schedule for routine effective preventive maintenance to their control facilities. A maintenance log shall be maintained separately or as part of the approved animal waste system management plan and signed by the owner/operator documenting that preventive maintenance has been accomplished. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (cleaning separators, catch basins, etc.) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures which may result in the discharge of pollutants to waters of the State.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 to 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.
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335-6-7-.30 Reserved.
Author:
Statutory Authority:
History:

335-6-7-.31 Discharge Notification.

(1) The discharge of waste/wastewater from facilities covered by this Chapter to a water of the State is not authorized and owners/operators of facilities with such discharges may be subject to enforcement action by the Department. If, for any reason, there is a discharge from an AFO, the owner/operator is required to visually monitor and notify the Director or his designee as soon as possible, but in no case later than 24 hours after becoming aware of any discharge to a water of the State caused by dike or structural failure, leakage, equipment breakdown, overflow caused by chronic or catastrophic rainfall events, human error, improper management, or any other reason. The owner/operator shall document the circumstances/reasons if elapsed time between becoming aware of the discharge and notification to the Department exceeds 4 hours.

(2) Additionally, the registrant shall document the following information and submit a report to the Department within five (5) days of becoming aware of such discharge:

(a) A description and cause of the discharge, including an estimate of the flow, discharge volume, and any analytical data;

(b) The period of discharge, including exact begin and end dates and times, and, if not corrected, the anticipated time the discharge is expected to continue, and steps taken (or to be taken) to reduce, eliminate, and prevent the recurrence of the discharge;

(c) If the discharge was caused by a precipitation event(s), information from the on-site rain gauge or weather station in close proximity to the facility concerning the size of the precipitation event(s);

(d) All AFO facilities shall sample and analyze all discharges to a water of the State from any treatment, storage, or other waste/wastewater retention facilities. Sample analyses shall be retained on site, and submitted to the Department within 5 days unless otherwise directed by the Director or his designee.

(3) Samples shall consist of grab samples taken from the overflow or discharges from the retention structures. A minimum of one sample should be obtained from the initial discharge immediately, but in no case later than 60 minutes after the registrant becoming aware of the discharge or the potential for discharge and sampling shall continue at least once every 6 hours if the discharge continues, unless an alternate schedule is required by the Director or his designee. The sample shall be obtained, stored, transported, and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR Part 136. Measurements taken for the purpose of monitoring shall be representative of the discharge.

(4) Should discharge occur for any reason, the sample analysis, at a minimum, must include the following:

(a) Fecal Coliform Bacteria (col./100 ml).

(b) 5-Day Biochemical Oxygen Demand (mg/l).

(c) Total Suspended Solids (mg/l).

(d) Ammonia Nitrogen (mg/l).

(e) Total Phosphorus (mg/l).

(f) Any pesticide, hydrocarbon, or other pollutant which the owner/operator has reason to believe might be present in the discharge.

(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 owner/operator must keep readily available onsite proper equipment and sample containers to obtain, store, handle, and transport any samples resulting from sampling conducted pursuant to the requirements of this Chapter or retain a QCP able to properly conduct sampling within timeframes as required by this Chapter.

(6) If required sampling is not conducted for any reason, the registrant must document the reasons why discharge samples could not be collected or why the discharger was unable to conduct sampling due to climatic conditions which prohibit the collection of samples, including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storm, etc.). Once dangerous conditions have passed, the registrant shall collect a sample of the discharge, if ongoing, or from the retention structure, storage pond/sump, or lagoon if the discharge has ceased. The sample shall be analyzed in accordance with the above procedures.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.

335-6-7-.32 Other Requirements.

(1) AFO owners/operators shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the owner/ operator to achieve compliance with the conditions of this Chapter. Proper operation and maintenance includes the operation of backup or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of this Chapter. Proper operation and maintenance also includes the requirements for maintaining adequate staff to properly operate the facility and for registrants to conduct prerequisite and annual training as described in Rule 335-6-7-.18.

(2) Any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device, record, or method required to be maintained under this Chapter shall, upon conviction, be punished by fines and/or imprisonment as provided by State and federal law.

(3) Bypass

(a) Any bypass is prohibited except as provided in (b) and (c) below:

(b) A bypass is not prohibited if:

1. It does not cause any applicable discharge limitation specified in this Chapter to be exceeded or cause or contribute to a violation of an applicable Water Quality Standard; and

2. It is necessary for essential maintenance of a treatment or control facility or system to assure efficient operation of such facility or system; and

3. The AFO owner/operator submits a written request for authorization to bypass to the Direct or his designee or at least 5 days prior to the proposed bypass, the owner/operator is granted such authorization by the Director or his designee, and the owner/operator complies with any conditions imposed by the Director or his designee; and

4. Approval of the request is consistent with the requirements of this Chapter; and

5. The AFO owner/operator monitors the discharge resulting from such bypass at a frequency, at least daily, or according to an alternate schedule as required by the Director or his designee, sufficient to prove compliance with applicable discharge limitations and requirements of this Chapter; and

6. The facility has been designed, constructed, operated, and regularly maintained in a manner that meets or exceeds NRCS technical standards and guidelines.

(c) A bypass is not prohibited and need not meet the requirements and limitations of this Chapter if:

1. It is unavoidable to prevent loss of life, personal injury, or severe property damage; and

2. There are no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime (this condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance); and

3. The AFO owner/operator submits a written request for authorization to bypass to the Direct or his designee or at least ten (10) days prior to the anticipated bypass

(if possible) or if not possible, immediately notifies the Department telephonically or by facsimile and notifies the Department in writing, but in no case later than 48 hours after the bypass stating the valid reasons why prior notification could not be submitted, the owner/operator is granted such authorization, and the owner/operator complies with any conditions imposed by the Director to minimize any adverse impact on human health or the environment resulting from the bypass; and

4. The AFO owner/operator monitors the discharge resulting from such bypass as required by this Chapter at least daily or according to an alternate schedule as required by the Director or his designee; and

5. The facility has been designed, constructed, operated, and regularly maintained in a manner that meets or exceeds NRCS technical standards and guidelines.

(d) The owner/operator has the burden of establishing that each of the conditions of b. or c. above have been met to qualify for an exception to the general prohibition against bypassing contained in a. above and an exemption, where applicable, from any discharge limitation or requirements specified in this Chapter.

(4) Upset

(a) A discharge which results from an upset need not meet the requirements and limitations of this Chapter if:

1. As soon as possible, but in no case later than 24 hours after becoming aware of the occurrence of the upset, the owner/operator orally reports the occurrence and circumstances of the upset to the Director or his designee; and

2. No later than five (5) days after becoming aware of the occurrence of the upset, the owner/operator furnishes the Director or his designee with evidence, including properly signed, contemporaneous operating/inspection logs, or other relevant evidence, demonstrating that

(i) an upset occurred;

(ii) the owner/operator can identify the specific cause(s) of the upset;

(iii) the owner/operator's facility was being properly operated at the time of the upset; and

(iv) the owner/operator promptly took all reasonable steps to minimize any adverse impact on human health or the environment resulting from the upset; and

3. The AFO owner/operator monitors the discharge resulting from such upset as required by this Chapter at least daily or according to an alternate schedule as required by the Director or his designee; and

4. The facility has been designed, constructed, operated, and regularly maintained in a manner that meets or exceeds NRCS technical standards and guidelines.

(b) The owner/operator has the burden of establishing that each of the conditions of a. above have been met to qualify for an exemption from any discharge limitation/requirement or operating standard specified in this Chapter.

(5) Property and Other Rights. Registration under this Chapter does not convey any property rights in either real or personal property, or any exclusive privileges, nor does it authorize any injury to persons or property or invasion of other private rights, or any infringement of federal, State, or local laws or regulations, nor does it authorize or approve the construction of any physical structures or facilities or the undertaking of any work in any waters of the State or of the United States.

(6) Groundwater. Unless specifically authorized by this Chapter or the Department, the discharge of pollutants to groundwater is not authorized. Should a threat of groundwater contamination occur, the Director may require groundwater evaluation and/or monitoring to properly assess the degree of the problem and the Director may require that any AFO/CAFO operator/owner undertake measures to mitigate, remediate, and/or abate any such discharge and/or contamination. Groundwater investigation/evaluation, monitoring, mitigation, remediation, and other activities performed voluntarily by the operator/owner or required by the Department, shall be conducted in accordance with a plan prepared and certified by a Professional Engineer (PE) or Professional Geologist (PG) and accepted by the Department.

(7) Coastal Zone Management

(a) Excepting those activities described in Rule 335-6-7-.32(7)(b) below, registration under this Chapter is conditionally certified consistent with the Alabama Coastal Area Management Plan (ACAMP) contingent upon continued compliance with the ACAMP.

(b) The conditional certification in Rule 335-6-7-.32(7)(a) above does not obviate the need for an AFO/CAFO owner/operator to apply for and/or otherwise obtain, if applicable, Coastal Use Permits and certifications required by Chapter 335-8. Of

particular note is the need to obtain a Coastal Use Permit for Commercial and Residential Developments in the Coastal Zone that are or will be greater than 5 acres in size.

(8) Activities Not Authorized By This Chapter

(a) Discharges from surface mining, mineral and ore raw material or product recovery and processing as described in Chapter 335-6-9 are not authorized by this Chapter unless specifically authorized by the Department on an individual basis.

(b) Discharge(s) from landfill activities as described in Chapter 335-13 are not authorized by this Chapter.

(c) Relocation, diversion, or other alteration of a water of the State is not authorized by this Chapter unless specifically approved in writing by the Director or his designee.

(9) Compliance With Water Quality Standards

(a) An AFO owner/operator or registrant may be required by the Director to apply for an Individual permit, if the Director determines that discharge under a registration approved pursuant to this Chapter causes or contributes to a violation of State Water Quality Standard(s) or stream use classification.

(b) Compliance with requirements of this Chapter or valid Registration terms and conditions notwithstanding, if any discharge(s) from the facility or regulated activity cause or contribute to a condition in contravention of State Water Quality Standards, the Department may require that the AFO owner/operator to take abatement action in an emergency situation, may modify any registration pursuant to the Department's Rules, may require the AFO owner/operator to take timely non-emergency abatement action, may require the owner/ operator to apply for an Individual permit pursuant to the Department's Rules, or may require any combination of the actions specified above.

(c) If the Department determines, on the basis of a notice provided pursuant to this Chapter or any investigation, inspection or sampling, that a modification of registration is necessary to assure maintenance of State Water Quality Standards or compliance with other provisions of the AAPCA, AWPCA or CWA, the Department may require such modification.

(10) Animal Mortality Emergency Response. In addition to proper planning and proper management of normal operating animal mortality as required by 335-6-7-.26(2)(i), AFO owners/ operators shall notify the State Veterinarian, ADAI immediately and shall

comply with ADAI requirements regarding emergency response for dead and diseased animal handling, transport, and disposal during occurrences of significant animal mortality due to disease, natural disaster, extreme climatological conditions, etc. to ensure the protection of groundwater and surface water quality.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-28-1 to 22-28-23; 22-22A-1 to 22-22A-16 et seq., as amended.
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335-6-7-.33 Reserved.
Author:
Statutory Authority:
History:

335-6-7-.34 Severability.

If any paragraph, subparagraph, provision, clause or portion of this chapter is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this chapter shall not be affected thereby.
Author: Richard Hulcher
Statutory Authority: Code of Ala. 1975, §§22-22-1 to 22-22-14; 22-22A-1 to 22-22A-16 et seq., as amended.
History: Amended: Filed February 24, 1999; effective March 31, 1999.