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Thank you for the opportunity to submit comments from statewide conservation groups and individuals (“Commenters”) on the following (collectively, “Rules”):

- **Revised** Rule 0400-40-05-.14
- **New** Chapter No. 0400-40-06-.07

Commenters understand that changes to the Rules governing animal feeding operations (AFOs) were, for the most part, a direct result of the Agency’s duty to comply with recent changes to T.C.A. § 69-3-108(b)(7)(B), (C) and T.C.A. § 69-3-108(b)(10) (“Loophole Legislation”).

Further, Commenters understand the intent of the Loophole Legislation was to relieve medium AFO/CAFO owners and operators of the burden of obtaining and maintaining a state operating permit to protect water quality. We regret the role TDEC has been forced to play in the inevitable degradation of some Tennessee waters.

### General

1. Is it the opinion of TDEC that the above Rules are in accordance with the Agency’s mission of “enhance[ing] the quality of life for citizens of Tennessee,” “protecting and improving the quality of Tennessee’s...water through a responsible regulatory system,” and “protect[] and promote[] human health and safety?”
2. **-14(5)(b)**. Nutrient Management Plan (NMP) requirements are listed in paragraph 9, not paragraph 10 (according to the revised, redlined version).



### AFO/CAFO Classifications

3. In these Rules, TDEC changed most instances of the term “CAFO” to “AFO,” and explained that the Agency would henceforth adhere to US EPA’s classification of a CAFO as defined in Table 0400-40-05-14.1. Commenters feel that TDEC should more clearly explain the various parameters a farmer would use if s/he was trying to figure out if the operation requires a state permit and/or a NPDES permit.

### Unregulated Animal Waste

4. Prior to this rulemaking, TDEC required an SOP with an NMP for AFOs/CAFOs not subject to NPDES permitting under the Clean Water Act and EPA rules, which implies that TDEC previously considered those AFOs/CAFOs to be a possible source of water pollution. Does TDEC believe medium AFOs/CAFOs are no longer a possible source of water pollution?
  - a. If so, based on what evidence?
  - b. If not, how does TDEC plan to compensate for this degradation of water quality near unregulated AFOs in the absence of the SOP requirement?
5. **-.14(4)**. This subsection lists two permit requirements for AFOs/CAFOs: 1) NPDES permits for “*large, medium, and designated CAFOs that discharge*” and 2) state permits for “*large CAFOs that utilize liquid waste management systems.*” What about operations *without* a liquid manure handling system? According to US EPA, a large CAFO can have “at least 82,000 laying hens” or “at least 125,000 chickens” and still not have a liquid waste management system. Would either of those operations require a state permit? If not, does TDEC have evidence that dry waste from AFOs is not a source of water pollution? If dry waste management is covered under different regulations, those regulations should be denoted here.

### Water Quality Assurance and Liability

6. Is it true that medium AFOs/CAFOs that opt-in to and comply with the SOP process are relieved of liability for citizen lawsuits under CWA? And that unpermitted AFOs/CAFOs are liable for citizen lawsuits under the CWA?
7. Please clarify the role that TDEC enforcement will have under the Rules regarding the improper storage, use, or disposal of animal waste from an unpermitted AFO/CAFO.
8. **-.14(2)** Item (c), which allowed the consideration of the status of pollution in nearby waterways when determining AFO classification, was entirely deleted.
  - a. Does TDEC believe that factors such as existing dissolved oxygen or *E. coli* levels in nearby waterways should not be considered when regulating small or medium AFOs/CAFOs?
  - b. What role did science play in the redefined method of AFO/CAFO classification?
9. **-.14(3)**.
  - c. The inability of the Director to require an SOP for a medium AFO/CAFO notwithstanding, please confirm that the Director still has the authority classify a small or medium AFO/CAFO as a large CAFO according to federal guidelines.
  - d. “*The Director shall conduct an on-site inspection prior to determining that an operation should be regulated under the CAFO permit program.*” Considering the Director has no discretion regarding whether an AFO requires an SOP (proposed Rule 0400-40-06-.03(3)) states that only “[n]on-discharging large AFOs, as defined by TABLE 0400-40-05-.14.1 of Rule 0400-40-05-.14, which utilize liquid waste management systems” need a permit),

what information might be revealed in an onsite visit that would affect whether an operation should be regulated under the CAFO permit program?

10. **-.14(5)(9)**. “Any permit issued to an AFO shall include a requirement to develop, submit and obtain state approval, ~~implement~~, and keep on site a site-specific nutrient management plan...”
- e. Why was the word “implement” deleted here?
  - f. Which AFO/CAFOs require an NMP?

### **Recordkeeping and Reporting**

11. **-.14(5)(10)(a)** This section states that “[a]ny NPDES permit issued to an AFO shall include: (a) a requirement that the permittee shall create, maintain for 5 years, and make available to the Director, upon request, the following...” and then proceeds to list 18 pieces of crucial information that factor into an AFO’s/CAFO’s waste management, such as inspection records, calculations for manure process and application, dates and amounts of waste applied to land, and sampling results for manure, wastewater and soil.
- g. If the ongoing records pertaining to those 18 pieces of information are crucial enough for TDEC to require the permittee to collect and maintain them, Commenters believe TDEC should require formal submission of those records to TDEC on a periodic basis, and those records should be uploaded to TDEC’s public DataViewer.
  - h. NPDES permits require monthly DMRs submitted to TDEC. That data can trigger NOV’s or enforcement actions. If “records documenting the implementation and management” of an NMP are a part of compliance with an NMP for a NPDES-permitted CAFO, as indicated here, how does TDEC ensure that the operation is in compliance *other than* when an onsite inspection is triggered by a water quality investigation (i.e., what would trigger an NOV based on noncompliance with the permit’s NMP?)
  - i. Is there an official TDEC inspection form for a NPDES-permitted CAFO that includes the viewing and analysis of NMP provisions? If so, can TDEC make a copy available?
  - j. How many onsite inspections of NPDES-permitted CAFOs by TDEC occurred in 2018? Did TDEC cite any NPDES-permitted CAFO for lack of compliance with its NMP in 2018?
12. **-.14(5)(10)(b)** Commenters concerned with the proper storage, use, and disposal of animal waste at or from AFOs/CAFOs feel that the process for 3<sup>rd</sup> party waste transfers should be more thorough and effective.
- k. “All other [small or medium] NPDES permitted AFOs shall ensure that the 3<sup>rd</sup> party signs an agreement...if the AFO transfers more than 100 tons of manure, litter, or process wastewater.” Is the 100-ton figure per transfer? Per month? Per year?
  - l. Do permittees have access to an official form to construct the agreement mentioned, or is it drafted by the AFO/CAFO or 3<sup>rd</sup> party? If there is an official form, can you reference it here? If not, would a template 3<sup>rd</sup> party waste transfer agreement be a benefit that TDEC could provide to assist AFOs/CAFOs with their recordkeeping responsibilities?
  - a. Does the 3<sup>rd</sup> party signatory (the waste receiver) have the same recordkeeping responsibility to maintain records of the agreements for five years?
  - b. Must the 3<sup>rd</sup> party signatory (the waste receiver) indicate the quantity, method, and destination of waste received that it sells, redistributes, or otherwise disposes of under the terms of this Agreement or within any other animal waste regulations? If so, please cite.
  - c. Does the 3<sup>rd</sup> party have a separate or related regulatory obligation to follow the listed “best management practices recommendations” when storing, using, or disposing of the waste it receives?

- i. If so, please cite.
    - ii. If not, does the inclusion of the list in the agreement represent the full scope of TDEC's governance in relation to the management of animal waste generated by a NPDES-permitted AFO/CAFO subsequent to a transfer to a 3<sup>rd</sup> party?
  - d. The requirement for a "signed certification statement" is unclear. Is that separate from the aforementioned "agreement?" Is a template for a proper certification statement provided? If so, please provide a copy.
13. **-14(5)(10)(c)** This section details the requirement for a NPDES-permitted AFO/CAFO to submit to TDEC an annual report.
- m. Annual reports from NPDES-permitted AFOs/CAFOs are public documents and should be uploaded to TDEC's public DataViewer.
  - n. No. 7 requires a *"statement indicating whether the current version of the AFO's nutrient management plan was developed or approved by a certified nutrient management planner."* If this section applies to NPDES-permitted AFOs/CAFOs, and if approved NMPs are a permit requirement, why would a statement of this nature be required?
  - o. Since the question mentioned above appears to be superfluous, our groups recommend changing the substance of the question from "was it approved?" to "was it implemented?" such that the AFO/CAFO must supply a statement indicating whether the current version of the AFO's approved nutrient management plan was **implemented as planned** within the NMP. Any short-term failures to do so can be explained to DWR in a manner consistent with the Agency's allowance of explanations of short-term DMR violations in response to an NOV. Any long-term failures to comply could result in official enforcement action(s) consistent with violations found in DMRs.

**Conclusion**

Commenters would love to join TDEC in a collaborative effort among TDEC staff, Tennessee Department of Agriculture staff, and state NGOs to develop a comprehensive regulatory system for **the proper storage, use, and disposal of animal waste from both medium and large CAFOs.**

Thank you,

Kathy Hawes, Tennessee Clean Water Network

**Commenters – Organizations**

Clean Water Expected in East Tennessee  
 Harpeth Conservancy  
 Obed Watershed Community Association  
 Tennessee Chapter of the Sierra Club  
 Tennessee Environmental Council  
 Tennessee Riverkeeper

**Commenters – Individuals**

William Francisco (Johnson City)  
 Mark & Marcy Frankel (Powell)  
 Joe McCaleb (Primm Springs)  
 Patrick Morales (Alcoa)  
 Kimberly Pettigrew (Knoxville)  
 George Proios (Rutledge)