

The Code of Alabama 1975

Title 22 HEALTH, MENTAL HEALTH, AND ENVIRONMENTAL CONTROL.

Chapter 25B REGULATION OF PRIVATELY OWNED WASTEWATER SYSTEMS.

Section 22-25B-1

Definitions.

For purposes of this chapter, the following terms shall have the following meanings unless the context clearly indicates otherwise:

- (1) ADEM. The Alabama Department of Environmental Management.
- (2) ADPH. The Alabama Department of Public Health.
- (3) CERTIFICATE OF ECONOMIC VIABILITY. The certification by the commission of the financial viability of a wastewater management entity's financial viability pursuant to this chapter.
- (4) CLUSTER WASTEWATER SYSTEM. An integrated wastewater collection system or treatment system, or both, or multiple systems serving a single development or contiguous developments, which collectively have a design flow of 15,000 GPD or less, and is designed and permitted for discharge of the treated wastewater to a subsurface distribution system, but excluding systems that discharge directly to surface waters of the state. The system must be designed by and certified by a licensed professional engineer to comply with design and permit requirements established by the ADPH. The term does not include a small-flow cluster system.
- (5) COMMISSION. The Alabama Public Service Commission.
- (6) COMMUNITY WASTEWATER SYSTEMS. An integrated wastewater collection system or treatment system, or both, or multiple systems serving a single development or contiguous developments, which collectively have a design flow of more than 15,000 GPD, and is designed and permitted for discharge of the treated wastewater to a subsurface distribution system, but the term specifically excludes systems that discharge directly to surface waters of the state. The system must be designed and certified by a licensed professional engineer to comply with the design and permit requirements established by ADEM.
- (7) CUSTOMER. A person, business, or other entity, public or private, that is connected or eligible for connection to a certified wastewater management entity's wastewater system upon proper payment of cost and fees and is subject to rates approved by the commission.
- (8) DEPARTMENT. ADEM or ADPH as their jurisdiction is applicable according to the terms of this chapter.
- (9) DESIGN FLOW. The average daily flow that the wastewater system will treat with appropriate consideration given to maximum flow periods, equalization, and organic loading. Flow from the same subdivision or contiguous subdivisions developed as a common group of wastewater systems, shall be

combined as one flow, even if from separate systems, for the purpose of determining whether ADEM or ADPH will permit the system.

(10) DRAFT PERMIT. A preliminary permit issued by the department setting forth the discharge and other requirements which will be included in the final permit that may be issued upon compliance with department rules.

(11) DWELLING. A house, manufactured/mobile home or house trailer, shelter, structure, or building, or portion thereof, that is or could reasonably be expected to be occupied in whole or in part as the home, residence, or sleeping place of one or more persons.

(12) EFFLUENT. Treated wastewater.

(13) ESTABLISHMENT. A facility other than a dwelling that is or could reasonably be expected to generate wastewater of similar composition as a dwelling and of similar strength of or higher strength than a dwelling.

(14) GPD. Gallons per day.

(15) PSC. The Alabama Public Service Commission.

(16) SMALL-FLOW CLUSTER SYSTEM. A wastewater system serving four or fewer dwellings, apartment units, or other establishments whether owned by a single person or multiple persons, including individual single-user septic tank systems but excluding systems that discharge directly to the waters of the state.

(17) WASTEWATER. Waterborne waste of similar composition as may be found in the typical residence or dwelling and sometimes referred to as sewage; but not to include wastewater generated at an industrial nonresidential site.

(18) WASTEWATER MANAGEMENT ENTITY. An entity which exercises sole responsibility for the operation and maintenance of one or more cluster or community wastewater systems.

(19) WASTEWATER SYSTEM. An integrated specialized technological process for the collection, treatment, processing, disposal, discharge, and reuse of domestic wastewater generated by multiple dwellings or establishments, including single structures with multiple units, sometimes referred to as a wastewater plant.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-2

Exempted entities.

The following entities shall not be certified or regulated by the commission, but shall be subject to all other requirements of this chapter:

(1) Cooperatives transacting business in this state pursuant to Chapter 6 of Title 37 deemed to be general welfare cooperatives.

(2) Municipalities and county governments and any public corporations, boards, agencies, or entities created by a municipality or county government. Nothing herein prohibits municipal and county governmental entities from contracting with any other public or private entity to manage, maintain, or service wastewater systems owned by them.

(3) Entities managing small-flow cluster systems. Notwithstanding the foregoing, entities managing small-flow cluster systems may elect to be subject to all requirements of this chapter.

(4) Entities owning wastewater systems including the source, collection, treatment, and disposal of the wastewater and all of the dwelling structures or commercial establishments served by them. Examples include, but are not limited to, a trailer park or apartment complex under single ownership.

(5) Entities that assume or acquire ownership or management of wastewater systems that were previously owned by entities of state, county, or local governments.

(6) Wastewater treatment systems owned or operated by industrial facilities.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-3

Responsibilities of wastewater management entities.

(a) No person, firm, corporation, or other legal entity shall operate as a wastewater management entity without full compliance with this chapter and rules promulgated hereunder.

(b) Every cluster and community wastewater system shall be operated by a wastewater management entity as authorized under this chapter. Wastewater management entities shall be subject to such operational permits as may be issued by the department and such certificates as may be issued by the PSC.

(1) A PSC certificate of financial viability shall be valid for a period of two years from the date of issuance. A new certificate of financial viability is required when a wastewater management entity is issued a new operational permit by the department or when an operational permit is modified by the department.

(2) An operational permit for a cluster or community wastewater system issued by the department shall be valid for a period of five years from the date of issuance. A new operational permit is required whenever there is a change in the ownership or operation of the wastewater system that would require a permit modification as determined by the department.

(c) All cluster wastewater systems shall only discharge pursuant to permits issued by the ADPH.

(d) All community wastewater systems shall only discharge pursuant to permits issued by ADEM.

(e) Unless by this chapter expressly exempted from regulation by the PSC, no person or entity shall engage in the construction or installation of a wastewater system subject to this chapter unless a certificate of financial viability has been issued to the system's management entity by the PSC and until a draft operational permit has been issued for the wastewater system by the department.

(f) No wastewater management entity shall engage in the maintenance or operation of a wastewater system or discharge therefrom without first obtaining and complying with a final permit issued by the department.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-4

ADPH regulation of cluster wastewater systems.

(a) Consistent with this chapter, the ADPH shall promulgate and enforce such rules as are necessary to regulate cluster wastewater systems and their wastewater management entities. Such rules may include, but may not be limited to, the following:

(1) The permitting, design, installation, repair, modification, location, and operation requirements of cluster wastewater systems and facilities.

(2) Minimum inspection, monitoring, operating, reporting, record maintenance, and system maintenance requirements for cluster wastewater system management entities.

(3) Mechanisms, methodologies, procedures, or guidelines, or any combination of these, to insure cluster wastewater systems and their management entities comply with law, regulations, conditions of operational permits, and directives of ADPH.

(b) Upon failure of a cluster wastewater entity to comply with this chapter, or any permit requirements, rule, order, or directive of ADPH, the ADPH may revoke the management entity's permit, assess a civil penalty not exceeding ten thousand dollars (\$10,000), or both, per compliance failure or violation.

(c) Each day a violation continues shall constitute a separate violation.

(d) The failure of the wastewater management entity to maintain a valid certificate of economic viability may constitute cause for permit revocation or the assessment of civil penalties, or both.

(e) The assessment and collection of civil penalties shall be in compliance with State Board of Health rules and the Alabama Administrative Procedure Act.

(f) Civil penalties may be assessed under this chapter for any compliance failure or violation occurring within three years prior to the date of issuance of an order or notice or commencement of civil action under this chapter.

(g) Civil penalties assessed hereunder and not paid as provided herein may be recovered in a civil action brought by the ADPH in the Circuit Court of Montgomery County or in the circuit court in whose jurisdiction any threatened or continuing violation occurs.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-5

ADEM regulation of community wastewater systems.

(a) Consistent with this chapter, ADEM shall promulgate and enforce rules as are necessary to regulate community wastewater systems and their wastewater management entities. Such rules may include, but may not be limited to, the following:

(1) The permitting, design, installation, repair, modification, location, and operation requirements of community wastewater systems and facilities.

(2) Mechanisms, methodologies, procedures, or guidelines, or any combination of these, to insure community wastewater systems and their management entities comply with law, regulations, conditions of operational permits, and directives of ADEM.

(3) Minimum inspection, monitoring, operating, reporting, record maintenance, and system maintenance requirements for community wastewater system management entities.

(b) Upon failure of any wastewater management entity to comply with this chapter, or any permit requirement, rule, or directive of ADEM, ADEM may revoke the management entity's permit or assess a civil penalty pursuant to the civil enforcement provisions of the Alabama Environmental Management Act and rules promulgated thereunder, or both. The failure of the wastewater management entity to maintain a certificate of economic viability issued by the PSC may constitute cause for permit revocation or the assessment of civil penalties by ADEM, or both.

(c) Any penalty assessed by ADEM pursuant to this section shall be in accordance with the civil enforcement provisions of the acts establishing ADEM, its rules, and the Alabama Administrative Procedure Act.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-6

PSC regulation of wastewater management entities.

(a) The PSC shall promulgate and enforce such rules as are necessary to certify and monitor the economic viability of wastewater management entities. Such regulations may include, but may not be limited to, the following:

(1) Financial viability requirements necessary to insure the long-term operation and maintenance of wastewater systems.

(2) Conditions for the operation or permitting, or both, of cluster wastewater and community wastewater systems.

(3) A system of notice to report any violations of certifications, permits, law, regulations, directives, or orders, or any combination of these, of the PSC, ADEM, or ADPH.

(4) Enforcement mechanisms to insure compliance with law, regulations, certificates, and directives of the PSC.

(5) Standardized financial operations and management of cluster and community wastewater systems and wastewater management entities.

(b) The PSC may make the determination of economic viability utilizing its own resources or may consult with or contract with other agencies of government or appropriate consultants. In determining the grant or denial of the certificate of economic viability, the PSC shall consider the economic viability of an existing entity or the expectation of economic viability of a proposed entity based upon the following criteria or any combination thereof:

(1) Opinion by an independent certified public accountant.

(2) Previous economic history of the entity.

(3) Assets, income, and expenses as related to liabilities of the entity.

(4) Financial stability and previous financial history of the principal of the entity, and the business plan and rate plan of the entity.

(5) Insurability, bondability, and creditworthiness of the entity as determined by standard business methods.

(c) Before the PSC issues any certificate of economic viability, the PSC shall require the wastewater management entity to submit to the PSC evidence of financial assurances. Financial assurances shall include at least one of the following: A performance bond, letter of credit made payable to the commission, pledge of assets, or other similar instrument or mechanism in an amount sufficient to continue management of the system if the entity ceases to exist or fails to fulfill its obligations to the clients served by the entity.

(d) The bond, pledge, letter of credit, or other instrument may be declared forfeited when the operational permit is expired, unless renewal application is under review by the department, or revoked. The PSC may present the declaration of forfeiture to the obligor on the instrument for payment.

(e) Failure of the obligor to make full and timely payment on its financial obligations shall constitute a cause of action for recovery in a civil action at the instance of the PSC.

(f) A wastewater management entity shall not sell, assign, or divest in any way assets or responsibilities without the express written consent of the PSC.

(g) Rate charges to customers for wastewater system service by a certified wastewater management entity shall be approved by the PSC pursuant to the laws, rules, regulations, and procedures pertaining to utilities.

(h) The failure of any wastewater management entity to comply with any requirement, rule, or directive of the PSC or to maintain its operating or discharge permit or other permits in good standing, may result in the revocation by the PSC of the wastewater management entity's certification or the assessment of a civil

penalty, or both, in accordance with statutory procedures and regulations of the PSC. Upon the revocation of a certificate of economic viability, the commission shall promptly notify the department.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-7

Fees and penalties.

The costs of administering this chapter by the PSC, ADEM, and ADPH shall be funded from certification fees, permit fees, and regulatory fees paid by the wastewater management entities. All fees and revenue of any kind generated as a result of the operation of this chapter shall be deposited to the credit of the PSC, ADEM, and ADPH as set forth below, and shall be continuously appropriated to the PSC, ADPH, and ADEM to implement and administer this chapter as follows:

- (1) The PSC is authorized to charge and collect from the wastewater management entity a fee for the processing and review of applications for and issuance of certifications as may be established by rules of the PSC.
- (2) The ADPH is authorized to charge and collect from any wastewater management entity applying for a permit a fee as established by rules of the State Board of Health.
- (3) The ADEM is authorized to charge and collect from any wastewater management entity applying for a permit a fee as established by rules of ADEM.
- (4) In addition to any permit fee collected by either ADEM or ADPH, the departments are authorized to collect from each certified wastewater management entity, and each certified wastewater management entity shall pay to either ADPH or ADEM according to the department's jurisdiction as set out in this chapter, a regulatory fee in the amount of four percent of annual gross receipts, payable quarterly on the wastewater systems each regulates.
- (5) Any fees authorized pursuant to this chapter shall be limited to the amount necessary to carry out the activities required in this chapter.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-8

Advisory group.

An advisory group shall be established to advise the appropriate regulatory agencies on construction/installation standards, hereafter known as the Advisory Group on Minimum Construction Standards, and shall be made up of the following members:

- (1) One representative appointed by the ADEM.
- (2) One representative appointed by the ADPH.
- (3) One representative appointed by the PSC.

- (4) One representative appointed by the Home Builders Association of Alabama.
- (5) One representative appointed by the Alabama Onsite Wastewater Board.
- (6) One representative appointed by the Wastewater Utility Management Association.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-9

Wastewater system failure.

(a) Upon the failure of a management entity to remediate any wastewater system failure within a reasonable time to protect the health and safety of the public or the environment as may be established by rules or orders of the State Board of Health or ADEM, upon the request of the applicable department, the PSC is hereby granted full authority to take possession of the system, correct the failure, and to operate the system or assign the system to another certified wastewater management entity.

(b) In the event the PSC operates or assigns a system as provided in subsection (a), it may call upon the violating wastewater management entity's performance bond, letter of credit, or pledged assets to correct the violation and facilitate the transfer to another certified wastewater management entity.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-10

Public right-of-way crossing.

A certified wastewater management entity, with the approval of the governmental entities in control of the rights-of-way, may install and maintain sewer collection and effluent transport lines within public rights-of-way according to an engineered design and inspection, to comply with the Department of Transportation's standards. The lines installation is limited to a crossing of the right-of-way and installed in proper casement and at no cost to the state, county, or municipal government.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-11

Civil action.

In addition to any rights and remedies specified herein or otherwise provided by law, the PSC, ADEM, ADPH, district attorney, or the Attorney General, or any combination of these, may commence a civil action to enjoin a violation in the circuit court in whose jurisdiction which any threatened or continuing violation occurs. In any such action, any person having an interest which is or may be adversely affected may intervene as a matter of right.

(Act 2009-773, p. 2388, §2.)

Section 22-25B-12

Relation to other laws.

(a) Except as specifically provided herein, this chapter is not intended to apply to small-flow cluster systems as defined in Section 22-25B-1 and is supplemental to all other laws and administrative rules and is not intended to repeal or replace any existing statute except to the extent that there is a direct conflict. In such case, this chapter shall control. Any individual, company, or other entity installing, maintaining, repairing, servicing, or manufacturing wastewater systems including single family and small-flow cluster systems, cluster wastewater systems, and community wastewater systems must obtain an appropriate license from the Alabama Onsite Wastewater Board pursuant to Chapter 21A, of Title 34, or from the ADEM.

(b) Notwithstanding any other law, all subsurface distribution wastewater systems serving establishments, a single development, or contiguous developments which collectively have a design flow of 15,000 GPD or less shall be permitted and regulated by the ADPH pursuant to rules promulgated by the State Board of Health, and all subsurface distribution wastewater systems serving establishments, a single development, or contiguous developments which collectively have a design flow of more than 15,000 GPD shall be permitted and regulated by the ADEM pursuant to rules promulgated by the ADEM.

(c) This chapter shall not apply in any county which has a local constitutional amendment authorizing the regulation of wastewater utilities, unless provided for by local act or the Legislature by local law applicable to the county provides for alternative regulation and rate control to apply in the county.

(d) This chapter shall in no way infringe upon or replace the authority granted to the Jefferson County Board of Health pursuant to Act No. 659 (1978).

(Act 2009-773, p. 2388, §§2, 4.)