

BEFORE THE
ENVIRONMENTAL MANAGEMENT COMMISSION
OF THE
ALABAMA DEPARTMENT OF ENVIRONMENTAL MANAGEMENT

IN THE MATTER OF:)
)
CONSIDERATION OF PROPOSED AMENDMENTS)
TO ADEM ADMIN. CODE DIVISION 335-6,)
WATER QUALITY PROGRAM REGULATIONS,)
CHAPTER 335-6-10, APPENDIX A)

ORDER

The Environmental Management Commission having considered the Hearing Record and Related Documents pertaining to the proposed amendments to ADEM Admin. Code Division 335-6, Water Quality Program Regulations, Chapter 335-6-10, Appendix, and pursuant to the motion having come before the Commission to deny the adoption of the proposed amendments, hereby ORDERS, ADJUDGES, and DECREES as follows:

1. That the above motion is hereby adopted; and
2. That the adoption of the proposed amendments before the Commission is denied; and
3. That this action has been taken and this Order shall be deemed rendered effective as of the date shown below.

Environmental Management Commission Order

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ISSUED this 10th day of April 2026.



Mary J. Merritt, Commissioner



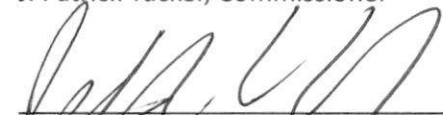
H. Lanier Brown, II, Commissioner



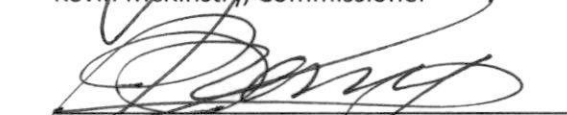
J. Patrick Tucker, Commissioner



Kevin McKinstry, Commissioner



John (Jay) H. Masingill, III, Commissioner



Ruby L. Perry, Commissioner



A. Frank McFadden, Commissioner

DISSENTS:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

Environmental Management Commission Order
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ABSTAINS:

Mary J. Merritt, Commissioner

H. Lanier Brown, II, Commissioner

J. Patrick Tucker, Commissioner

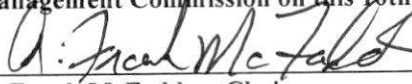
Kevin McKinstry, Commissioner

John (Jay) H. Masingill, III, Commissioner

Ruby L. Perry, Commissioner

A. Frank McFadden, Commissioner

**This is to certify that this Order is a true and accurate
account of the actions taken by the Environmental
Management Commission on this 10th day of April 2026.**



A. Frank McFadden, Chair
Environmental Management Commission
Certified this 10th day of April 2026

**Reconciliation Statement for Proposed Amendments of the
ADEM Administrative Code Division 6-Water Quality Program**

Chapter 335-6-10 (Water Quality Criteria)

At the direction of the Alabama Environmental Management Commission, the Alabama Department of Environmental Management (ADEM) initiated the rulemaking process to revise the toxicity values in ADEM Administrative Code Rule 335-6-10-A, Appendix A, for the following pollutants: Arsenic, Cyanide, 1,3-Dichlorobenzene, 1,3-Dichloropropylene, 4,6-Dinitro-2-methylphenol, 2,4-Dinitrotoluene, Ethylbenzene, Hexachloroethane, Pentachlorophenol, Toluene, 1,2,4-Trichlorobenzene, and Trichloroethylene. The proposed revisions are summarized below:

335-6-10-A, Appendix A

- The Department proposes to revise the cancer potency factor for Arsenic from the current value of 1.75 (kg-day)/mg to 32 (kg-day)/mg.
- The Department proposes to revise the reference dose for Cyanide from the current value of 0.02 mg/(kg-day) to 0.0006 mg/(kg-day).
- The Department proposes to revise the reference dose for 1,3-Dichlorobenzene from the current value of 0.0134 mg/(kg-day) to 0.002 mg/(kg-day).
- The Department proposes to revise the cancer potency factor for 1,3-Dichloropropylene from the current value of 0.1 (kg-day)/mg to 0.122 (kg-day)/mg.
- The Department proposes to revise the reference dose for 4,6-Dinitro-2-methylphenol from the current value of 0.00039 mg/(kg-day) to 0.0003 mg/(kg-day).
- The Department proposes to revise the cancer potency factor for 2,4-Dinitrotoluene from the current value of 0.31 (kg-day)/mg to 0.667 (kg-day)/mg.
- The Department proposes to revise the reference dose for Ethylbenzene from the current value of 0.1 mg/(kg-day) to 0.022 mg/(kg-day).
- The Department proposes to revise the cancer potency factor for Hexachloroethane from the current value of 0.014 (kg-day)/mg to 0.04 (kg-day)/mg.
- The Department proposes to revise the cancer potency factor for Pentachlorophenol from the current value of 0.12 (kg-day)/mg to 0.4 (kg-day)/mg.
- The Department proposes to revise the reference dose for Toluene from the current value of 0.2 mg/(kg-day) to 0.0097 mg/(kg-day).
- The Department proposes to remove the reference dose for 1,2,4-Trichlorobenzene from the current value of 0.01 mg/(kg-day) and add a cancer potency factor for 1,2,4-Trichlorobenzene of 0.029 (kg-day)/mg.
- The Department proposes to revise the cancer potency factor for Trichloroethylene from the current value of 0.0126 (kg-day)/mg to 0.05 (kg-day)/mg.

On January 12, 2026, a public hearing was held to receive data, views, and comments from interested persons regarding the proposed revisions. Written comments were accepted anytime during the public comment period, which extended from November 13, 2025, through January 12, 2026.

Numerous speakers presented oral testimony at the hearing, and the Department received numerous written comments during the public comment period. Comments in support of the proposed revisions as well as comments against the proposed revisions were received.

The attached Response to Comments document summarizes the comments received and provides the Department's responses. Due to the rationale as presented in these responses, the Department is not proposing any changes to the toxicity values as proposed in the petition granted by the Environmental Management Commission.

Alabama Department of Environmental Management
2025 Petition Rulemaking
Response to Comments
Public Hearing January 12, 2026
Public Comment Period November 13, 2025, through January 12, 2026

335-6-10 Water Quality Criteria
Appendix A

1. Several commenters suggest the Department has not demonstrated that the proposed revisions would provide more protection for human health and aquatic life. These commenters also state that ADEM has not provided evidence that current standards are not protective.

Response: The Department’s goal is to adopt or revise water quality standards that are protective of human health and the environment and based on sound scientific rationale. 40 CFR 131.11(b) states that the criteria adopted must be based on 304(a) guidance, 304(a) guidance with site specific considerations, or other scientifically defensible values. Additionally, ADEM Admin. Code r. 335-6-10-.07 currently requires the Department to utilize the Cancer Potency Factor (CPF) or Reference Dose (RfD) values available in the Integrated Risk Information System (IRIS) unless another value is determined by the Department in consultation with the Alabama Department of Public Health (ADPH). In this case, the proposed changes to the water quality criteria in this rulemaking are the result of the granting of a petition by the Environmental Management Commission which required the Department to initiate rulemaking to revise the CPF or RfD for the twelve pollutants in question.

The Department did reach out to ADPH to initiate the consultation process. After reviewing the petition for rulemaking and applicable laws, ADPH recommended “that ADEM retain a reputable consulting firm that has experience in this subject matter. This field of work is research intensive and would be best performed by an individual possessing a Diplomate of the American Board of Toxicology Certification. The process to determine new, if needed, water criteria will take time to produce a proper result.” Because of the time restrictions set in motion by the granting of the petition for rulemaking, the Department was precluded from following the recommendations provided by ADPH. In addition, during the pendency of this rulemaking, Act 2026-81 became effective on February 19, 2026. This Act imposes specific requirements on the Department relating to IRIS and the use of best available science when developing numeric criteria.

2. Many commenters recommend ADEM thoroughly evaluate all necessary technical information to assure the proposed values are based on the best available and most relevant scientific data.

Response: In response to a rulemaking petition, the EMC directed the Department to initiate rulemaking on June 13, 2025, for the proposed rule revisions. Because of the time restrictions set in motion by the granting of the petition for rulemaking, the Department has not completed a comprehensive review of all data and information pertaining to human health criteria and was also precluded from following the recommendations provided by ADPH. ADEM based the proposed revisions on the toxicity values as proposed by the rulemaking petition which was granted by the Environmental Management Commission. ADEM agrees that the proposed values should reflect scientifically defensible data. In addition, see response to comment 1.

3. Several commenters suggest the Alabama Department of Environmental Management (Department) reconsider the proposed revisions due to proposed criteria being below detection limits of available laboratory equipment.

Response: Under the Clean Water Act (CWA), states are required to establish water quality criteria to protect designated uses. These criteria are utilized when deriving appropriate water quality-based effluent limits for National Pollutant Discharge Elimination System (NPDES) permits. NPDES permit language specifies how monitoring data should be reported and how compliance is determined. Typically, when analytical test results using the most sensitive Environmental Protection Agency (EPA)-approved testing methodology cannot detect pollutant concentrations at the permitted levels, results reported as less than the method detection limit are considered to be in compliance with permit requirements.

4. Many commenters suggest that there will be high costs associated with achieving the proposed concentrations and that the Department has not conducted an economic impact analysis.

Response: Under the Clean Water Act (CWA), states and tribes are required to establish water quality criteria to protect designated uses. National Recommended Water Quality Criteria published by EPA pursuant to §304(a) of the CWA provide guidance to states and tribes regarding ambient concentrations of pollutants. EPA's recommended criteria do not reflect consideration of economic impacts or the technological feasibility of meeting pollutant concentrations in ambient water.

5. Several commenters suggest the proposed revisions would place Alabama's industries at a competitive disadvantage to industries in nearby states where criteria are substantially less stringent.

Response: See response to comment 4.

6. Several commenters stated that the proposed toxicity values would result in immediate and unavoidable non-compliance.

Response: ADEM Admin. Code r. 335-6-6-.16(a)(2) allows for up to three years for permittees to attain compliance with any new water quality standard being adopted by the Environmental Management Commission (EMC). In addition, see response to comment 4.

7. One commenter stated that the proposal would mandate treatment that is not technically or economically feasible.

Response: See response to comment 4.

8. Some commenters suggest the proposed revisions may result in job losses and economic displacement by forcing businesses to close or relocate outside of Alabama.

Response: See response to comment 4.

9. One commenter states the proposed revisions would cause more regulatory delays with permit renewals and modifications resulting in impacts to economic development and infrastructure projects.

Response: The Department will continue to use its best efforts to process complete permit applications in a timely fashion. However, the proposed revisions are likely to result in the modification of applicable permit terms and conditions, as these criteria are utilized when deriving appropriate water-quality based effluent limits for NPDES permits. Also, see response to comment 6.

10. Several commenters stated that the proposed changes would result in uncertain and significant economic impacts.

Response: See response to comment 4.

11. One commenter suggests that the Department cannot consider economic impacts or technological feasibility and must rely solely on science regarding the proposed revisions.

Response: See response to comment 4.

12. Some commenters recommend ADEM consider additional regulatory flexibility mechanisms where naturally occurring contamination exceeds revised standards.

Response: Water quality criteria exceedances resulting from naturally occurring conditions are allowed under existing water quality regulations. However, for some pollutants, such as mercury and arsenic, that have both anthropogenic and non-anthropogenic sources, it is very difficult to determine what is naturally occurring. This rulemaking only addresses water quality criteria and does not include regulatory mechanisms to ensure attainment of water quality standards.

13. Many commenters suggest EPA's Integrated Risk Information System (IRIS) human health assessments lack transparency, objectivity, and scientific integrity and recommend the Department withdraw from using IRIS as the basis for regulatory decision making.

Response: See response to comment 1.

14. Many commenters ask for clarification if ADEM consulted with the Alabama Department of Public Health (ADPH) on proposed toxicity values not assessed by IRIS.

Response: ADEM met with ADPH to discuss the nature and scope of the interagency consultation process in developing appropriate toxicity values. After reviewing the petition for rulemaking and applicable laws, ADPH recommended "that ADEM retain a reputable consulting firm that has experience in this subject matter. This field of work is research intensive and would be best performed by an individual possessing a Diplomate of the American Board of Toxicology Certification. The process to determine new, if needed, water criteria will take time to produce a proper result.". Because of the time restrictions set in motion by the granting of the petition for rulemaking, the Department was precluded from following the recommendations provided by ADPH.

15. Many commenters state IRIS assessments are intended as guidance and are not mandated by EPA.

Response: See response to comment 1.

16. Some commenters recommend ADEM defer action on proposed revisions pending resolution of federal regulatory uncertainty regarding IRIS assessments.

Response: Because the EMC granted the petition for rulemaking, the Department was precluded from deferring action on the proposed revisions.

17. Several commenters question the scientific validity of EPA's IRIS assessment for the cancer potency factor of arsenic.

Response: See response to comment 1.

18. Several commenters state that naturally occurring arsenic concentrations are higher than ADEM's current human health criteria by an order of magnitude and lowering the criteria would provide no additional health benefits.

Response: See response to comments 1 and 12.

19. Several commenters express concern with compliance records of facilities due to arsenic criteria being below detection limits of available equipment.

Response: See response to comment 3.

20. Some commenters recommend ADEM reevaluate current arsenic criteria to include an inorganic arsenic factor of 0.10.

Response: This comment is accepted as important input to Alabama's water quality program but is not relevant to the proposed rule revisions as the rulemaking was initiated to only revise the CPF or RfD for the twelve pollutants in question. The Department will continue to review and evaluate all data and information and collaborate with EPA and stakeholders regarding human health criteria.

21. Some commenters recommend the Department adopt the national arsenic drinking water standards of 10 µg/L.

Response: See response to comment 1.

22. One commenter states that the bioconcentration factor approach is not scientifically valid in predicting arsenic concentrations in fish.

Response: ADEM based the proposed revisions on the toxicity values as proposed by the rulemaking petition which was granted by the Environmental Management Commission. ADEM agrees that the proposed values should reflect scientifically defensible data and concurs with the recommendation of ADPH that considers the retention of an appropriately

certified consultant possessing a Diplomate of the American Board of Toxicology Certification to perform research intensive work including, but not limited to, the review of scientific data both during the development of criteria and as received during the public comment period.

23. One commenter requests a full review of all input factors be conducted and that the Department considers resulting water quality criteria in order to fully understand the impact and appropriateness of proposed changes.

Response: See response to comments 2, 20, and 22.

24. One commenter suggests all updated exposure factors be adopted comprehensively rather than only adopting toxicity values.

Response: See response to comments 2, 20, and 22.

25. One commenter suggests the Department consider exposure factors specific to Alabama and not rely solely on national data.

Response: See response to comments 2, 20, and 22.

26. Some commenters state that the petitioners have previously petitioned ADEM to revise water quality criteria and were rejected by the EMC and EPA and that there is no evidence that the basis for this petition should carry more weight in this instance than it has in the past.

Response: The proposed changes to the water quality criteria in this rulemaking are the result of the granting of a petition by the EMC which required the Department to initiate rulemaking to revise the CPF or RfD for the twelve pollutants in question.

27. Some commenters state this rulemaking is unnecessary, and the Department has a triennial review process for technical and regulatory review and receive EPA, stakeholder, and public input.

Response: See Response to comments 22 and 26.

28. One commenter recommends the Department await EPA's new probabilistic risk assessment tool before adopting the proposed revisions.

Response: See response to comments 16 and 22.

29. One commenter stated that the proposed changes do not address the water quality criteria as a whole for the pollutants.

Response: See response to comments 2 & 20.

30. One commenter requests ADEM adopt the proposed revisions and notes that water quality-based effluent limitations that are below analytical levels should include additional permit language regarding reporting monitoring data and assessing compliance.

Response: See response to comment 3.

31. Some commenters express support and request ADEM adopt the proposed revisions.

Response: Comment noted.

**Prepared Statement delivered to the Alabama
Environmental Management Commission on
April 10, 2026 by David A. Ludder on behalf
of the Environmental Defense Alliance**

Act No. 2026-81 is the most regressive environmental legislation passed by the Legislature since ADEM was created 44 years ago. It ensures that polluters can continue to pollute and that the health of fish consumers will be placed in jeopardy. Alabama environmental groups opposed the legislation; the Director of ADEM did not.

Subsection (e) requires that ADEM's existing rule that imposes EPA's Integrated Risk Information System (IRIS) values as default values for Reference Doses and Cancer Potency Factors must be repealed. However, Subsection (e) does not prohibit the Commission from considering IRIS chemical assessments, EPA's recommended human health water quality criteria, or the studies and analyses relied upon by EPA when considering the adoption of new or revised water quality criteria.

Subsection (b) prohibits the adoption of new or revised criteria that are "more stringent or extensive in scope, coverage, or effect than any federal law or regulation setting a standard regarding the same or substantially similar topic." This provision has no effect unless there is

a federal law or regulation setting a standard on pollutants in ambient surface waters. There are no such standards in existence at the present time. EPA is authorized to promulgate water quality criteria for States, but it has not done so for Alabama.

Subsection (c) prohibits the adoption of new or revised water quality criteria unless “*the scientific and technical information relied on to support the standard established by the rule is based on the best available science and the weight of scientific evidence.*” Those terms are defined very restrictively.

Subsection (d) requires that the best available science and the weight of scientific evidence supporting the adoption of a new rule or amendment of an existing rule that establishes numeric criteria shall establish a *direct causal link between exposure at or above the numeric criteria provided by the rule and manifest bodily harm in humans.*

I have parsed the language of Subsections (c) and (d) and conclude that any proposed new or revised water quality criteria will have to be evaluated against a minimum of 21 factors. Application of these factors

will necessitate the ADEM employ or contract with a toxicologist if new or revised water quality criteria are to be adopted.

Act No. 2026-81 has made it more difficult for the Commission to protect human health. It is unfortunate that the Legislature has chosen to protect polluters, rather than human health.