

SUBCHAPTER K : CONCENTRATED ANIMAL FEEDING OPERATIONS
§§321.181-321.198
Effective July 13, 1995

§321.181. Waste and Wastewater Discharge and Air Emission Limitations.

(a) It is the policy of the Texas Natural Resource Conservation Commission that there shall be no discharge or disposal of waste and/or wastewater from animal feeding operations into or adjacent to waters in the state, except in accordance with subsection (b) of this section or Subchapter B of this chapter (relating to Commercial Livestock and Poultry Production Operations) or §305.1 of this title (relating to Scope and Applicability). Waste and/or wastewater generated by a concentrated animal feeding operation under this subchapter shall be retained and utilized or disposed of in an appropriate and beneficial manner as provided by commission rules, orders, authorizations or permits.

(b) Wastewater pollutants in the overflow may be discharged to waters in the state whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed and operated to contain process generated wastewaters plus the runoff (storm water) from a 25-year, 24-hour rainfall event for the location of the point source (facility authorized under this subchapter). There shall be no effluent limitations on discharges from retention structures constructed and maintained to contain the 25-year, 24-hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and the retention structure has been properly maintained. Retention structures shall contain process wastewaters plus the 25-year, 24-hour storm event in accordance with §321.192 of this subchapter (relating to Pollution Prevention Plans).

(c) Facilities shall be operated in such a manner as to prevent the creation of a nuisance or a condition of air pollution as mandated by Chapters 341 and 382 of the Texas Health and Safety Code.

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§321.182. Definitions.

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) **Agronomic rates** - The land application of animal wastes and/or wastewater at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth.

(2) **Air contaminant** - Particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor or any combination thereof produced by processes other than natural. Water vapor is not an air contaminant.

(3) **Animal feeding operation** - A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained

for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.

(4) **Animal unit** - A unit of measurement for any animal feeding operation 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 over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses/mules multiplied by 2.0.

(5) **Aquifer** - A saturated permeable geologic unit that can transmit, store and yield to a well, the quality and quantities of ground water sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels, permeable sedimentary rocks such as sandstones and limestones, and/or heavily fractured volcanic and crystalline rocks. Ground water within an aquifer can be confined, unconfined or perched.

(6) **Auction market** - Any person engaged in the business of buying or selling livestock on a commission basis; or furnishing stockyard services for livestock producers, feeders, market agencies, and buyers. Stockyard services include pens or other enclosures and their appurtenances, in which live cattle, sheep, goats, swine, horses/mules are received, held, or kept for sale or shipment. For the purposes of this subchapter, the term auction market is synonymous with the terms sale ring, auction barn, livestock commission companies and livestock sale barn, as these terms are commonly used in the agriculture industry.

(7) **Best Management Practices ("BMPs")** - The schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters in the state. Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

(8) **Chronic or catastrophic rainfall event** - For the purposes of these rules, these terms shall mean a series of rainfall events which would not provide opportunity for dewatering and which would be equivalent to or greater than the 25-year, 24-hour storm event or any single event which would be equivalent to or greater than the 25-year, 24-hour storm event. Catastrophic conditions could include tornados, hurricanes, or other catastrophic conditions which could cause overflow due to the high winds or mechanical damage.

(9) **Commission** - The Texas Natural Resource Conservation Commission.

(10) **Concentrated animal feeding operation ("CAFO")** - Any animal feeding operation which the executive director designates as a significant contributor of pollution or any animal feeding operation defined as follows:

(A) Any new and existing operations which stable and confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:

- (I) 1000 slaughter or feeder cattle;
- (ii) 700 mature dairy cattle (whether milkers or dry cows);
- (iii) 2500 swine weighing over 55 pounds;
- (iv) 500 horses;
- (v) 10,000 sheep;
- (vi) 55,000 turkeys;
- (vii) 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;
- (viii) 30,000 laying hens or broilers when facility has a liquid waste handling system;
- (xi) 5000 ducks; or
- (x) 1000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.

(B) Any new and existing operations covered under this subchapter which discharge pollutants into waters in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into the waters in the state, and which stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:

- (i) 300 slaughter or feeder cattle;
- (ii) 200 mature dairy cattle (whether milkers or dry cows);
- (iii) 750 swine weighing over 55 pounds;
- (iv) 150 horses;
- (v) 3000 sheep;
- (vi) 16,000 turkeys;

(vii) 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;

(viii) 9000 laying hens or broilers when facility has a liquid waste handling system;

(ix) 1500 ducks; or

(x) 300 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.

(C) Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event. Poultry facilities that have no discharge to waters in the state normally are not considered a concentrated animal feeding operation. However, poultry facilities that use a liquid waste handling system or stockpile litter near watercourses or dispose of litter on land such that stormwater runoff or flooding can wash it into surface water or ground water may be considered a concentrated animal feeding operation. For the purposes of air quality, the term CAFO, as used in this subchapter, includes any associated feed handling and/or feed milling operations located on the same site as the CAFO.

(11) **Control facility** - Any system used for the retention of wastes on the premises until their ultimate disposal. This includes the collection and retention of manure, liquid waste, process wastewater and runoff from the feedlot area.

(12) **Dairy Outreach Program Areas** - The areas of the state involved in the Commission's Dairy Outreach Program as of the effective date of these rules. The areas include all of the following counties: Erath, Bosque, Hamilton, Comanche, Johnson, Hopkins, Wood and Rains.

(13) **Edwards Aquifer** - That portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis and Williamson Counties. (See Chapter 313 of this title relating to Edwards Aquifer).

(14) **Edwards Aquifer recharge zone** - Generally, that area where the Edwards and associated limestones crop out in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis and Williamson Counties and the outcrops of other formations in proximity to the Edwards limestone, where faulting and fracturing may allow recharge of the surface waters to the Edwards Aquifer, and the area in Uvalde County within 500 feet of the Nueces, Dry Frio, Frio, and Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone as otherwise defined. The recharge zone is specifically that geological area delineated on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 313 of this title relating to Edwards Aquifer).

(15) **Executive Director** - The executive director of the commission or an employee of the commission acting in the behalf of and under the direction of the executive director.

(16) **Flushwater waste handling system** - A system in which fresh water or wastewater is recycled or used in transporting waste.

(17) **Ground water** - Subsurface water that occurs below the water table in soils and geologic formations that are saturated, and is other than underflow of a stream or an underground stream.

(18) **Houses or housed lot** - Totally roofed buildings with open or enclosed sides wherein livestock or poultry are housed on solid concrete or dirt floors, slotted (partially open) floors over pits or waste collection areas in pens, stalls or cages, with or without bedding materials and mechanical ventilation. For the purposes of this subchapter, the term housed lot is synonymous with the terms slotted floor building, barn, stable, or house, for livestock or poultry.

(19) **Hydrologic connection** - The interflow and exchange between control facilities or surface impoundments and waters in the state through an underground corridor or connection.

(20) **Lagoon** - An earthen structure for the biological treatment of liquid organic wastes. Lagoons can be aerobic, anaerobic, or facultative depending on their design and can be used in series to produce a higher quality effluent.

(21) **Land application** - The removal of wastewater and waste solids from a control facility and distribution to, or incorporation into the soil mantle primarily for beneficial reuse purposes.

(22) **Liner** - Any barrier in the form of a layer, membrane or blanket, naturally existing, constructed or installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters in the state.

(23) **Natural Resources Conservation Service ("NRCS")** - An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service ("SCS").

(24) **New concentrated animal feeding operation** - A new concentrated animal feeding operation which is not authorized under Subchapter B of this chapter (relating to Commercial Livestock and Poultry Production Operations) as of the effective date of these rules.

(25) **No discharge** - The absence of flow of waste, process generated wastewater, contaminated rainfall runoff or other wastewater from the premises of the animal feeding operation, except for overflows which result from chronic or catastrophic rainfall.

(26) **Nuisance** - Any discharge of air contaminant(s), including but not limited to odors, of sufficient concentration and duration that are or may tend to be injurious to or which adversely affects

human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.

(27) **Open lot** - Pens or similar confinement areas with soil, concrete, or other paved or hard surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for small portions of the total confinement area affording protection by windbreaks or small shed-type shade areas. For the purposes of this subchapter, the term open lot is synonymous with the terms dirt lot or dry lot, for livestock or poultry, as these terms are commonly used in the agricultural industry.

(28) **Operator** - The owner or one who is responsible for the management of a concentrated animal feeding operation or animal feeding operation subject to the provisions of this subchapter.

(29) **Permanent odor sources** - those odor sources which may emit odors 24 hours per day. For the purposes of this subchapter, permanent odor sources include but are not limited to pens, confinement buildings, lagoons, retention facilities, manure stockpile areas and solid separators. For the purposes of this subchapter, permanent odor sources shall not include any feed handling facilities, land application equipment or land application areas.

(30) **Permit-by-rule** - An authorization by rule as provided by this subchapter in accordance with the Texas Water Code, §26.040.

(31) **Permittee** - Any person granted authorization under an individual permit or order, as well as by rule.

(32) **Pesticide** - A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.

(33) **Process wastewater** - Any process generated wastewater directly or indirectly used in the operation of a CAFO (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste); washing, cleaning or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control), and precipitation 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, meat or eggs).

(34) **Qualified ground water scientist** - A scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contamination fate and transport, and corrective action.

(35) **Recharge zone/feature** - Those natural features either on or beneath the ground surface, in any location specific to the site under evaluation where, due to surface and/or geologic features, a significant hydrologic connection exists between the ground surface and the underlying ground water within an aquifer. Examples include, but are not limited to: a permeable and porous soil material that directly overlies a weakly cemented or fractured limestone, sandstone, or similar type aquifer; and fractured or karstified limestone or similar type formation that crops out on the surface, especially near a water course.

(36) **Retention facility or retention structure** - All collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds, pits, tanks and lagoons used to store wastes, wastewaters and manures.

(37) **Technical merit** - For the purpose of this subchapter, "technical merit" means evidence demonstrating that the application on its face does not meet all technical requirements of this subchapter and therefore the granting of an authorization under this subchapter may result in detrimental impacts to ground water underlying the related CAFO, detrimental impacts to surface water quality within one mile of the CAFO, or evidence demonstrating that history of compliance by the applicant has resulted in detrimental impacts to such ground water or surface water quality within these geographic limits.

(38) **25-Year, 24-Hour rainfall event/25-Year rainfall event** - The maximum rainfall event with a probable recurrence interval of once in 25-years, with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States", May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed therefrom.

(39) **Waste** - Manure (feces and urine), litter, bedding, or feedwaste from animal feeding operations.

(40) **Wastewater** - Water containing waste or contaminated by waste contact, including process-generated and contaminated rainfall runoff.

(41) **Waters in the state** - Ground water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

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§321.183. Applicability.

(a) Any existing feedlot/concentrated animal feeding operation (CAFO) as defined and authorized under Subchapter B of this chapter (relating to Commercial Livestock and Poultry Production Operations) on the effective date of these rules shall continue to be regulated in accordance with Subchapter B of this title and subject to the terms and conditions of any permit (relating to Commercial Livestock and Poultry Production Operations) issued under Subchapter B of this chapter. Any CAFO which has submitted an administratively complete permit application under Subchapter B of this chapter on the effective date of these rules shall be subject to the terms and conditions of Subchapter B of this chapter in the processing and/or issuance of any such permit and shall continue to be regulated under Subchapter B of this title following issuance of the permit. Any application for permit renewal, amendment or transfer for any permit issued under Subchapter B of this title shall be reviewed and/or issued under the provisions of Subchapter B of this title.

(b) In accordance with Texas Water Code §26.040, any new CAFO may be regulated by rule, rather than by individual permit, subject to subsections (b)-(1) of this section, provided such operations comply with §§321.191-321.197 of this title (relating to Proper CAFO Operation and Maintenance; Pollution Prevention Plans; Best Management Practices; Other Requirements; Monitoring and Reporting Requirements; Registration; and Dairy Outreach Program Areas). The provisions of this subsection are applicable to all new CAFOs, either housed or open lots, including beef cattle, dairy cattle or milk production areas; swine; sheep; goats; horses; chickens, including broilers, layers and/or breeders; turkeys, including breeders and/or feeders; any other animal species not specifically listed; and auction markets for which an authorization is required on or after the effective date of these rules.

(c) The executive director may require any animal feeding operation to comply with the requirements of this subchapter in order to achieve the policy and purposes enumerated in the Texas Water Code, §§5.120 and 26.003; the Health and Safety Code, Chapters 341, 361 and 382; and §321.181 of this title (relating to Waste and Wastewater Discharge and Air Emission Limitations). The executive director may require the operator of any new CAFO to apply for and obtain an authorization under this subchapter. Cases for which an authorization may be required include, but are not limited to, situations where:

(1) the operation is located near surface and/or ground water resources;

(2) compliance with standards in addition to those listed in this subchapter is necessary in order to protect fresh water from pollution; or

(3) the operation is not in compliance with the standards of this subchapter. A CAFO operator shall submit a complete application within 90 days of notification from the executive director that adherence to this subchapter is required.

(d) Any new or expanding concentrated animal feeding operation not authorized pursuant to subsection (a) of this section and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in the definition of CAFO in §321.182(A) of this title (relating to Definitions) shall apply for and obtain authorization under this subchapter.

(e) Any new or expanding CAFO located in areas designated under §321.197 of this title (relating to Dairy Outreach Program Areas), and that is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the number of animals specified in the definition of CAFO in §321.182(B) of this title (relating to Definitions) but less than or equal to the number of animals specified in the definition of CAFO in §321.182(B) shall either apply for and obtain authorization under this subchapter or comply with the provisions of §321.194(a)(1),(g), and (h) of this title (relating to Other Requirements) and the provisions of §§321.191-321.195 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements).

(f) New CAFOs are prohibited on the Edwards Aquifer recharge zone.

(g) All CAFOs which are authorized under this subchapter must develop and implement a pollution prevention plan. Operators of an animal feeding operation not required to obtain authorization under this section must locate, construct and manage waste control facilities and air control facilities (where applicable) to protect the air, surface water, and ground water in accordance with the requirements of this subchapter.

(h) Any new or expanding CAFO, which is required to submit an application in accordance with this subchapter, may not commence operation of any waste management facilities or any facility that has the potential to emit air contaminants without first receiving authorization in accordance with this subchapter. Any new or expanding CAFO located in the Dairy Outreach Program Areas as designated under §321.197 of this title (relating to Dairy Outreach Program Areas), having more than 300 animal units and which is not required to submit an application in accordance with this subchapter shall not commence operation of any waste management facilities or any facility that has the potential to emit air contaminants without first filing for registration in accordance with §321.196 of this subchapter (relating to Registration) and securing the necessary approval from the executive director that such facilities have been constructed in accordance with provisions of this subchapter. The executive director shall conduct an on-site inspection after receipt of the request for approval and may issue a written approval or denial as soon as possible but not later than 21 days of the request seeking approval.

(i) Any CAFO which has existing authority under the Texas Clean Air Act (TCAA) does not have to meet the air quality criteria of this subchapter. Pursuant to the TCAA, §382.051, any new CAFO which meets all of the requirements of this subchapter is hereby entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Those CAFOs which would otherwise be required to obtain an air quality permit under Chapter 116 of this title, which cannot satisfy all of the requirements of this subchapter shall apply for and obtain an air quality permit pursuant to Chapter 116 of this title in addition to any authorization required under this subchapter. Those animal feeding operations which are not required to obtain authorization under this subchapter may be subject to requirements under Chapter 116 of this title. Any change in conditions such that a person is no longer eligible for authorization under this section requires authorization under Chapter 116 of this title. No person may concurrently hold an air quality permit issued under Chapter 116 of this title and an authorization with air quality provisions under this

subchapter for the same site. Any application for a permit renewal, amendment or transfer for any permit issued under the TCAA shall be reviewed and/or issued under the provisions of Chapter 116 of this title.

(j) Any animal feeding operation authorized under this subchapter which is a new major source, or major modification as defined in Chapter 116 of this title shall obtain a permit under Chapter 116 of this title.

(k) Any facility operating under a certified water quality management plan from the Texas State Soil and Water Conservation Board or any facility which qualifies for and obtains such a plan, is not a CAFO for purposes of this subchapter and is not covered by the provisions of this subchapter, unless referred to the commission in accordance with the Texas Agriculture Code, §201.026.

(l) Upon written request to the executive director by the owner/operator, any facility authorized under Subchapter B of this title (relating to Commercial Livestock and Poultry Production Operations) shall be authorized under this subchapter without notice and hearing. Such new authorization under this subchapter shall not impose any additional conditions or other requirements unless there is substantial modification to the facility constituting a major amendment as defined by §305.62 of this title (relating to Amendment) or to address compliance problems with the facility or its operations in accordance with a commission order or amendment. Transfer of authorization under this subsection will require compliance with the appropriate provisions of §§321.191-321.197 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements). Such transfer shall not require any changes to existing structural measures which are documented to meet design and construction standards in effect at the time of installation. Any owner/operator of a CAFO having less than or equal to 1000 but more than 300 animal units, located in any area designated under §321.197 of this title (relating to Dairy Outreach Program Areas) and requesting coverage under this subsection are subject to provisions of subsection (e) of this section. A request for transfer that also proposes a major amendment shall be subject to notice and comment provisions of this section.

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§321.184. Application Requirements.

(a) Any person whose concentrated animal feeding operation (CAFO) is required to file an application for an authorization under this subchapter, or who requests an amendment, modification, or renewal of such authorization granted under this subchapter shall complete, sign, and submit an application to the executive director, according to the provisions of this section.

(b) Applicants shall comply with the applicable provisions of §§305.43, 305.44, 305.46, and 305.47 of this title (relating to Who Applies; Signatories to Applications; Designation of Material as Confidential; and Retention of Application Data).

(c) Application for authorization under this subchapter shall be made on forms prescribed by the executive director. The applicant shall submit an original completed application with attachments and three copies to the executive director at the headquarters in Austin, Texas, and one additional copy of the

application with attachments to the appropriate Texas Natural Resource Conservation Commission regional office. The completed application shall be submitted to the executive director signed and notarized and with the following information:

- (1) The verified legal status of the applicant.
- (2) The payment of applicable fees.
- (3) The signature of the applicant, in accordance with agency requirements.
- (4) The maximum number of animals for which the facilities have been designed.
- (5) A final site plan for the facility showing the boundaries of land owned, operated or controlled by the applicant and to be used as a part of a CAFO, the locations of all pens, lots, ponds, disposal areas, and any other types of control or retention facilities, and all adjacent landowners within 500 feet of the property line of all tracts containing facilities and all on-site or off-site waste disposal areas, including their name, address and telephone number. As used in this subchapter, the term "disposal area" does not apply to any lands not owned, operated or controlled by the CAFO operator for the purpose of off-site land application of manure, wherein the manure is given or sold to others for beneficial use.
- (6) A County General Highway Map (with graphic scale clearly shown) to identify the relative location of the CAFO and at least a one mile area surrounding the facility.
- (7) One original (remainder in copies) United States Geological Survey 7 1/2 minute quadrangle topographic map or an equivalent high quality copy showing the boundaries of land owned, operated, or controlled by the applicant and to be used as a part of a CAFO, and the location of all private water wells (abandoned or in use) within 150 feet and public wells within 500 feet of the outer boundary of retention facilities and all springs, lakes, or ponds downstream of the facility within one mile of the outer boundary of the retention facilities.
- (8) A copy of the pollution prevention plan for the CAFO for which the application is filed. Prior to utilization of wastewater retention facilities, documentation of liner certifications by a professional engineer must be submitted (if applicable).
- (9) A copy of a recorded deed or tax records showing ownership, or a copy of a contract or lease agreement between the applicant and the owner of any lands to be utilized under the proposed CAFO. This requirement does not apply to any lands not owned, operated, or controlled by the applicant for the purpose of off-site land application of manure wherein the manure is given or sold to others for beneficial use.
- (10) A certification by a NRCS engineer, registered professional engineer or qualified ground water scientist that no recharge features exist on any tracts owned, operated or controlled by the applicant and utilized under the application.

(11) Where the applicant can not document the absence of recharge features on the tracts for which an application is being filed, the final site plan shall also indicate the specific location of any and all recharge features on any property owned, operated or controlled by the applicant under the application as certified by a NRCS engineer, registered professional engineer, or qualified ground water scientist. The applicant shall also submit a plan, developed by a NRCS engineer or registered professional engineer, to prevent impacts on the recharge zone/feature and associated ground water formation which may include the following:

(A) Installation of the necessary and appropriate protective measures such as impervious cover, berms or other equivalent protective measures covering all affected facilities and disposal areas; or

(B) Submission of a detailed ground water monitoring plan covering all affected facilities and disposal areas. At a minimum, the ground-water monitoring plan shall specify procedures to annually collect a ground-water sample from representative wells, have each sample analyzed for chlorides, nitrates and total dissolved solids and compare those values with background values for each well; or

(C) Any other similar method or approach demonstrated by the applicant to be protective of any associated recharge zone/feature.

(12) Area land use map (Air quality only). This map should identify the property line, the permanent odor sources and the distance and direction to any residences, animal feeding operations, businesses or occupied structures within a one mile radius of the permanent odor sources. The map shall include the north arrow and scale of map.

(13) The applicant shall indicate in the application the location and times where the application may be inspected by the public. Within 48 hours of receiving notice of administrative and technical completeness, the applicant shall either make a copy of the application available for public inspection at the applicant's place of business during normal business hours, Monday through Friday, or shall provide a copy of the application to a public place within the county where the proposed facility is to be located so that the copy may be made available for inspection at a public place during regular business hours. Such places may include, but are not limited to, public libraries; district, county, or municipal court offices; community recreation centers; or public schools.

(d) Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as required by §305.503 of this title (relating to Fee Assessment). No fees under Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification) shall be required of an applicant for a permit-by-rule issued under this subchapter.

(e) Each permittee shall comply with §§305.61 and 305.64-305.68 of this title (relating to Applicability, Transfer of Permits, Corrections of Permits, Revocation and Suspension, Revocation and Suspension Upon Request or Consent, Action and Notice on Petition for Revocation or Suspension).

(f) Authorizations granted under this subchapter shall be effective for a term not to exceed five years, unless extended by order of the commission.

(g) Air quality buffer distance requirements for new CAFOs. At the time of initial application, any CAFO designed to confine livestock in numbers equal to or greater than 1000 animal units, or confine poultry at numbers greater than 30,000 with a liquid waste handling system shall not locate any permanent odor sources within 0.25 miles of any occupied residence or business structure, school, church, or public park without written consent and approval from the landowner. For the purposes of this subchapter, any measurement of a buffer distance shall be from the nearest edge of the permanent odor source to the nearest edge of an occupied structure or designated recreational area listed under this subsection.

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§321.185. Application Review.

(a) Applications for authorizations or major amendments to such authorizations under this subchapter shall be reviewed by the executive director for administrative and technical completeness within 15 working days of receipt of the application by the executive director. Upon determination that the application contains the information and attachments required under this subchapter, the executive director shall declare that the application is administratively and technically complete.

(b) Within five working days of declaration of administrative completeness, the executive director shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative and technical completeness which is suitable for publishing or mailing, under the requirements of §321.186(b) of this title (relating to Notice of Application), and shall forward that statement to the applicant.

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§321.186. Notice of Application.

(a) Notice of application. The notice of application and administrative/ technical completeness shall contain the following information:

- (1) the identifying number given the application by the commission;
- (2) the type of authorization being sought under the application;
- (3) the name and address of the applicant;
- (4) the date on which the application was submitted;

(5) a brief summary of the information included in the application, including but not limited to the general location of facilities and disposal areas associated with the application, and the location where a copy of the application may be reviewed by interested persons;

(6) the format for submission of a comment in accordance with this subchapter to the executive director regarding the application; and

(7) the date, time, and place where all comments are to be received by the executive director in relation to the numbered application, such comment period shall not be less than 30 days or more than 35 days from the actual date of publication.

(b) Publication.

(1) The applicant shall cause the notice of application and administrative/technical completeness approved by the executive director to be published once in a newspaper regularly published, and generally circulated within the county and area wherein the proposed facility is to be located, and within an adjoining county wherein any potential affected person may reside.

(2) The date of publication for notice of application and administrative/technical completeness shall not be later than the date set by the executive director.

(3) The applicant is responsible for the cost of publication. The applicant shall notify the executive director verbally or by facsimile within 24 hours of the first available working day after the publication of the notice, and shall provide the executive director a certified copy of the publication, within 20 calendar days of the date established by the executive director for publication. If the applicant does not provide the executive director with the appropriate publisher's affidavit within 20 days of the date established by the executive director, the executive director shall cease processing and return the application.

(c) Application returned. If an application is received which is not administratively/technically complete, the executive director shall notify the applicant of the deficiencies prior to expiration of the review period (15 working days) by certified mail return receipt requested. If the additional requested information is received within 30 days of receipt of the deficiency notice, the executive director will evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative/technical completeness in accordance with subsection (a) of this section. If the requested information is not submitted by the applicant within 30 days of the date of receipt of the deficiency notice, the executive director shall return the incomplete application to the applicant.

(d) Notice by mail.

(1) The executive director will transmit the notice of application and administrative/technical completeness by first-class mail to persons listed in paragraph (2) of this subsection and to other persons who, in the judgment of the executive director, may be affected. The applicant is responsible for the cost of required notice. A record on file with the staff of the executive

director which includes the list of persons to whom notice was mailed and the date of mailing, signed by a person with personal knowledge that the mailout occurred, shall create a presumption that notice was mailed in accordance with this section.

(2) the notice shall be mailed by the executive director to the following:

(A) the potentially affected landowners named on the final site plan submitted with the application;

(B) the mayor and health officials of the city or town in which the facility is or will be located or in which waste is or will be disposed of;

(C) the county judge and health authorities of the county in which the facility is located or in which waste is or will be disposed of;

(D) the Texas Department of Health;

(E) the Texas Parks and Wildlife Department;

(F) the applicant;

(G) persons who request to be put on the mailing list, including participants in past commission proceedings for the facility who have submitted a written request to be put on the mailing list;

(H) state and federal agencies for which notice is required in 40 Code of Federal Regulations 124.10(c); and

(I) for applications regarding operations located in an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas), notice shall be mailed to the river authority whose jurisdictional watershed includes that location; and

(3) the date of mailing for a notice of application and administrative/technical completeness shall be established by the executive director.

(4) The notice shall include instructions regarding the requirements contained in §321.187 of this title (relating to Public Comments) providing the manner and timeframe for the submission of comments to the proposed application.

Adopted June 14, 1995

Effective July 13, 1995

§321.187. Public Comments.

(a) For comments to the application to be qualified and considered by the executive director, such comments must:

(1) be sworn and in writing;

(2) be received by the executive director not later than 30 days from the date of publication or actual receipt of the notice;

(3) describe in detail how the application, if approved, would affect a personal, property, or other legally justiciable interest of the commenter;

(4) describe in detail how the application technical merit, i.e., fails to meet the applicable requirements set forth in this subchapter and therefore issuance of the permit-by-rule may result in detrimental impacts to ground water underlying the related concentrated animal feeding operation, detrimental impacts to surface water quality within one mile of the facility, or evidence demonstrating that the history of compliance by the applicant has resulted in detrimental impacts to such ground or surface water quality within these geographic limits; and

(5) the specific action, e.g., special conditions, denial of application, etc., the commenter wishes the commission to take in response to the application.

(b) The executive director shall, within 21 days of the deadline by which comments must be received by the executive director, prepare and make available to all commenters, the applicant, and the public interest counsel a copy of, and the executive director's responses to, all comments to the proposed application or amended application which were timely filed with the executive director. Such notification shall include the executive director's determination of whether any comments did or did not demonstrate technical merit.

(c) Not later than the 20th day after the date of the executive director's letter notifying the applicant, commenter(s) and public interest counsel of the executive director's determination that a comment(s) has demonstrated technical merit, applicant shall either:

(1) file a request, in accordance with subsection (e) of this section, to have the commission review the executive director's determination that a comment has demonstrated technical merit;

(2) request the executive director to suspend processing of the application for a period of time not to exceed 30 days to enable the applicant to provide additional information in accordance with subsection (g) of this section;

(3) request the executive director to forward the application for a contested case hearing in accordance with applicable rules; or

(4) withdraw the application from consideration without prejudice and without reimbursement of fees.

(d) Not later than the 20th day after the date of the executive director's letter notifying the applicant, commenters and public interest counsel of the executive director's determination that no

comments demonstrated technical merit, any qualified commenter may file with the chief clerk, general counsel, and executive director a request to have the commission review the executive director's determination that the commenter's comments have not demonstrated technical merit.

(e) Any person requesting commission review of the executive director's determination of whether any comments did or did not demonstrate technical merit shall also provide copies of the request to the applicant or commenters, whichever is applicable, as well as the public interest counsel, at the same time the request is filed with the chief clerk, general counsel, and the executive director. The commission shall consider a request to review the executive director's determination of whether any comments did or did not demonstrate technical merit within 30 days of receipt by the chief clerk of the request for review. The applicant or commenter may not request more than one review each of an original or amended application by the commission under this subsection.

(f) If the commission has affirmed the executive director's determination that a comment did demonstrate technical merit, then the applicant shall request, within 20 days after the date of issuance of the commission's written order, one of the actions specified under subsection (c)(2-4) of this section.

(g) Any submission of additional information or other change to the application under subsection (c)(2) of this section cannot constitute a major amendment to the application as provided by §281.23 of this title (relating to Application Amendment). The executive director and chief clerk shall hold in abeyance all requests for commission review submitted in accordance with subsection (d) of this section. Not later than 14 days following the submission of an amended application under this subsection, the executive director shall provide a copy of the amended application to the commenters requesting review and the public interest counsel and shall notify the applicant, commenters, and the public interest counsel of whether any of the original comments received still demonstrate technical merit. Not later than the 20th day after the date of the letter notifying the applicant, commenters requesting review and the public interest counsel, the commenters and applicant shall notify the executive director, chief clerk, and general counsel in writing of whether they wish to request commission review of the executive director's determination in reference to the amended application.

(h) The issuance of a permit-by-rule under this subsection can only occur if all technical merit issues have been resolved and there has been no substantial modification(s), which would constitute a major amendment to the application as provided by §281.23 of this title (relating to Application Amendment). The executive director shall issue a permit-by-rule in accordance with this subchapter within 14 days of the following, whichever is applicable, if:

(1) no timely comments demonstrating technical merit were received by the end of the comment period, as specified under subsection (a)(2) of this section;

(2) no requests for review by the commission were filed by commenters on the original application, in accordance with subsections (d) and (e) of this section;

(3) no commenter pursued a request for a review before the commission on the amended application, in accordance with subsection (g) of this section; or

(4) the issuance of a commission order affirming the executive director's determination that no comment demonstrated technical merit.

(i) In the event the applicant does not provide written response to the executive director in accordance with subsections (c) or (g) of this section, then the executive director may notify the applicant and person(s) commenting in writing that the application is denied or returned, or take other appropriate action as authorized by Chapter 305 of this title (relating to Consolidated Permits) and the provisions of this subchapter.

Adopted June 14, 1995

Effective July 13, 1995

§321.188. Permit Issuance.

(a) A permit-by-rule issued under this subchapter by the executive director shall contain the following:

(1) name and address of the permittee;

(2) the maximum number and type of animals authorized for confinement at the facility;

(3) the applicable water quality and/or air quality provisions of §§321.191-321.195 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements); and

(4) the applicable provisions of §305.125 of this title (relating to Standard Permit Conditions).

(b) A permit-by-rule issued by the commission after contested case hearing as provided by §321.187 of this title (relating to Public Comments) shall contain the elements listed under subsection (a) of this section and either any requirements or additional conditions determined appropriate as a result of an alternative dispute resolution process or any additional conditions or provisions the commission has determined appropriate in accordance with its findings of fact and conclusions of law.

Adopted June 14, 1995

Effective July 13, 1995

§321.189. Amendments.

(a) Any request for a change in term, condition, or provision of a permit-by-rule issued under this subchapter or a modification of the final site plan will require the permittee to file an application in accordance with §321.184 of this title (relating to Application Requirements).

(b) Amendment initiated permit-by-rule expiration. The existing permit-by-rule will remain effective and will not expire until action on the application for amendment is final. The commission or executive director, in accordance with this subchapter, may extend the term of a permit-by-rule when taking action on an application for amendment.

(c) Amendment application considered a request for renewal. For applications filed in accordance with this subchapter, an application for an amendment to a permit-by-rule may also be considered as an application for renewal of the permit-by-rule if so requested by the applicant.

Adopted June 14, 1995

Effective July 13, 1995

§321.190. Renewal.

The permittee shall file an application for renewal of a permit-by-rule issued under this subchapter. Any permittee with an issued and effective permit-by-rule shall submit an application for renewal at least 180 days before the expiration date of the effective permit-by-rule, unless permission for a later date has been granted by the executive director. The executive director shall provide the permittee notice of deadline for application for renewal at least 240 days before the permit-by-rule expiration date. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit-by-rule.

(1) An application for a renewal of a permit-by-rule which does not propose any other change to the authorization and where there has been no related formal major enforcement action against the authorized facility during the last 36 months of the term of the permit-by-rule may be granted by the executive director without notice and public comment. As used in this subchapter, the term "major enforcement action" shall apply to those enforcement actions in which the executive director or the commission has determined that a violation which would contribute to pollution of surface water or ground water, or an unauthorized discharge has occurred; such discharge was within the reasonable control of the permittee; and such discharge could have been reasonably foreseen by the permittee. In addition to the above provisions, for any application for renewal of a permit-by-rule within an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas), an annual compliance inspection shall have been completed within the 12 months prior to the executive director processing the application.

(2) A fee of \$315 to be applied toward processing of the application.

(3) Upon receipt of the application, the executive director shall determine whether the application for renewal satisfies the criteria in paragraph (1) of this section within 15 working days. A permittee submitting an application for renewal satisfying the criteria in subsection (a) of this section will automatically be issued a notice of renewal by the executive director in accordance with §321.188 (a) of this title (relating to Permit Issuance).

(4) If the application for renewal cannot meet all of the criteria in paragraph (1) of this subsection, then an application for renewal shall be filed in accordance with §321.184 of this title (relating to Application Requirements).

(5) If an application for renewal requests a major amendment, as defined by §305.62 of this title (relating to Amendment), of the existing permit-by-rule, an application shall be filed in accordance with §321.184 of this title (relating to Application Requirements).

(6) If renewal procedures have been initiated before the permit-by-rule expiration date, the existing permit-by-rule will remain in full force and effect and will not expire until action on the application for renewal is final.

(7) The executive director may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).

Adopted June 14, 1995

Effective July 13, 1995

§321.191. Proper CAFO Operation and Maintenance.

The facilities covered under this subchapter are required to document all Best Management Practices (BMPs) used to comply with all applicable waste and wastewater discharge and air emission limitations in this subchapter. Such documentation shall be included in the Pollution Prevention Plan (PPP) outlined in this subchapter and shall be made available to the executive director upon request. Where applicable, equivalent and applicable measures contained in a site specific animal waste management plan prepared by the Natural Resources Conservation Service (NRCS), may be substituted for the BMPs and PPP requirements in this subchapter. Where provisions in the NRCS plan are substituted for applicable BMPs or portions of the PPP, the PPP must refer to the appropriate section of the NRCS plan. If the PPP contains reference to the NRCS Plan, a copy of the NRCS plan must be kept on site.

Adopted June 14, 1995

Effective July 13, 1995

§321.192. Pollution Prevention Plans.

(a) A pollution prevention plan shall be developed for each facility covered under this subchapter. Pollution prevention plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit the discharge of pollutants to waters in the state and nuisance and odor conditions. The plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this subchapter. The plan shall identify a specific individual(s) at the facility who is responsible for developing, implementation, maintenance, and revision of the pollution prevention plan. The activities and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.

(b) Where a NRCS plan has been prepared for the facility, the pollution prevention plan may refer to the NRCS plan when the NRCS plan documentation contains equivalent requirements for the facility. When the permittee uses a NRCS plan as partial completion of the pollution plan, the NRCS plan must be kept on site. Design and construction criteria developed by the NRCS can be substituted for the documentation of design capacity and construction requirements (see subsection (f) of this section) of the pollution prevention plan provided the required inspection logs and water level logs in §321.192 (f)(3) and (11) of this title (relating to Pollution Prevention Plans) are kept with the NRCS Plan. Waste management plans developed by the NRCS can be substituted for the documentation of application rate calculations in subsection (f) (19) and (24) of this section. NRCS Waste Management Plans which have been prepared since January 1, 1989 are considered by the Natural Resources Conservation Service to

contain adequate management practices. To insure the protection of water quality, the Natural Resources Conservation Service has determined that NRCS plans prepared prior to 1989 must be submitted for renewal with the Natural Resources Conservation Service or a waste management professional before December 1995. NRCS has determined that all plans should be reviewed every five (5) years to insure proper management of wastes.

(c) The plan shall be signed by the owner or other signatory authority in accordance with §305.44 of this title (relating to Signatories to Applications), and be retained on site in accordance with §305.39 (d) of this title (relating to Monitoring and Reporting Requirements). The plan shall be updated as appropriate.

(d) Upon completion of a plan review, the executive director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this subchapter. After such notification from the executive director, the permittee shall make changes to the plan within 90 days after such notification unless otherwise provided by the executive director.

(e) The permittee shall amend the plan prior to any change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters in the state or if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges or creating a nuisance condition from concentrated animal feeding operations.

(f) The plan shall include, at a minimum, the following items:

(1) Each plan shall provide a description of potential sources which may reasonably be expected to add pollutants to waters in the state or create a nuisance condition from the facility. Each plan shall identify activities and materials which may potentially be pollutant sources or create a nuisance. Each plan shall include:

(A) A site plan/map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies.

(B) The plan shall identify the specific location of any recharge zones/features located on any tracts of land planned to be utilized under the provisions of this subchapter. In addition, the plan should also locate and describe the function of all measures installed to prevent impacts to identified recharge zones/features.

(C) A list of significant materials that are used, stored or disposed of at the concentrated animal feeding operation (such as pesticides, cleaning agents, fuels etc.). And a list of any significant spills of these materials at the facility after the effective date of these rules, or for new facilities, since date of operation.

(D) All existing sampling data.

(2) The pollution prevention plan for each facility shall include a description of management controls appropriate for the facility, and the permittee must implement such controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants or nuisance at the facility.

(3) The plan shall include the location and a description of existing structural and nonstructural controls. Structural controls shall be inspected at least four times per year for structural integrity and maintenance. The plan shall include dates for inspection of the retention facility, and a log of the findings of such inspections.

(4) The plan must include documentation of the assumptions and calculations used in determining the appropriate volume capacity of the retention facilities. In addition to the 25-year, 24-hour rainfall, the volume capacity of the retention facility shall be designed to meet the demands of a hydrologic needs analysis (water balance) which demonstrates the irrigation water requirements for the cropping system maintained on the wastewater application site(s). Precipitation inputs to the hydrologic needs analysis (water balance) shall be the average monthly precipitation taken from an official source such as the "Climatic Atlas of Texas", LP-192, published by the Texas Department of Water Resources, dated December, 1983, or the most recent edition, or successor publication. The consumptive use requirements of the cropping system shall be developed on a monthly basis, and shall be calculated as a part of the hydrologic needs analysis (water balance). The following volumes shall be considered in determining the analysis:

- (A) the runoff volume from all open lot surfaces;
- (B) the runoff volume from all areas between open lot surfaces that is directed into the retention facilities;
- (C) the rainfall multiplied by the area of the retention and waste basin;
- (D) the volume of rainfall from any roofed area that is directed into the retention facilities;
- (E) all waste and process generated wastewater produced during a twenty-one (21) day, or greater, period;
- (F) the estimated storage volume for a minimum one (1) year of sludge accumulation;
- (G) the storage volume required to contain all wastewater and runoff during periods of low crop demand;
- (H) the evaporation volume from retention facility surfaces;
- (I) the volume applied to crops in response to crop demand;

(J) the minimum treatment volume required for waste treatment, if treatment lagoon; and/or

(K) any additional storage volume required as a safety measure as determined by the system designer.

(5) The maximum required storage value calculated by the hydrologic analysis requirements should not encroach on the storage volume required for the 25-year, 24-hour rainfall event. Wastewater application rates utilized in the hydrologic needs analysis (water balance) should not induce runoff or create tailwater.

(6) In addition, the retention facility should include a top freeboard of two (2) feet and in no case less than one (1) foot.

(7) A lagoon in a single lagoon system and a primary lagoon in a multi-stage lagoon system shall be designed to maintain the necessary treatment volume or surface area as calculated using the manure production data (mean plus one standard deviation) published by American Society of Agricultural Engineers (ASAE) standards D384.1, dated June, 1988, and applicable updates to comply with anaerobic lagoon design criteria as established by ASAE standards EP-403.2, dated December, 1992, and applicable updates, or other site-specific data documented in the PPP.

(8) Evaporation systems shall be designed to withstand a 10-year (consecutive) period of maximum recorded monthly rainfall (other than catastrophic), as determined by a hydrologic needs analysis (water balance), and sufficient freeboard (not less than one foot) shall be maintained to dispose of rainfall and rainfall runoff from the 25-year, 24-hour rainfall event without overflow. In the hydrologic needs analysis determination, any month in which a catastrophic event occurs the analysis shall replace such an event with not less than the long term average rainfall for that month.

(9) Where appropriate, site specific information should be used to determine retention capacity and land application rates. All site specific information used must be documented in the pollution prevention plan.

(10) The plan shall include a description of the design standards for the retention facility embankments. The following minimum design standards are required for construction and/or modification of a retention facility:

(A) Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees;

(B) The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content;

(C) Site specific variation in embankment construction must be accompanied by compaction testing, certification by a professional engineer, or certified to be in accordance with NRCS design standards. Compaction tests must be certified by a professional engineer; and

(D) All embankment walls shall be stabilized to prevent erosion or deterioration.

(11) The plan must include a schedule for liquid waste removal. A date log indicating weekly inspection of wastewater level in the retention facility, including specific measurement of wastewater level will be kept with the plan. Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, tanks or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The operator shall restore freeboard for a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces such freeboard, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater shall be available whenever needed to restore the freeboard required to accommodate the rainfall and runoff resulting from the 25-year, 24-hour rainfall event.

(12) A permanent marker (measuring device) shall be maintained in the wastewater retention facilities to show the following: the volume required for a 25-year, 24-hour rainfall event; and the predetermined minimum treatment volume within any treatment pond. The marker shall be visible from the top of the levee. At no time shall a treatment lagoon at a CAFO that is operated under an air quality authorization be dewatered to a level below the predetermined treatment volume, except for cleanout periods or periods where the net effect of evaporation and rainfall render it impractical to maintain the treatment volume without pumping fresh ground water from an aquifer.

(13) The primary lagoon in a multi-stage lagoon system shall be designed and operated so that the lagoon maintains a constant level at all times unless prohibited by climatic conditions. Where practical, any contaminated runoff should be routed around the primary lagoon into the secondary lagoon.

(14) A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the pollution prevention plan.

(15) Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility shall insure that all construction and design is in accordance with good engineering practices. Where site specific variations are warranted, the permittee must document these variations and their appropriateness to the plan. Existing facilities which have been properly maintained and show no signs of structural breakage or leakage will be considered to be properly constructed. Structures built in accordance with site specific Natural Resources Conservation Service plans and specifications will be considered to be in compliance with the design and capacity requirements of this subchapter if the site specific conditions are the same as those used by the NRCS to develop the plan (numbers of animals, runoff area, wastes generated, etc.) All retention structure design and construction shall, at a minimum, be in accordance with the technical standards developed by the NRCS. The permittee must use those standards that are current at the time of construction.

(16) The permittee shall include in the plan, site specific documentation that no significant hydrologic connection exists between the contained wastewater and waters in the state.

Where the permittee cannot document that no significant hydrologic connection exists, the ponds, lagoons and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters and ground waters.

(A) The permittee can document lack of hydrologic connection by either: documenting that there will be no significant leakage from the retention structure; or documenting that any leakage from the retention structure would not migrate to waters in the state. This documentation shall be certified by a NRCS engineer, professional engineer or qualified groundwater scientist and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

(B) For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness described below. Documentation that leakage will not migrate to waters in the state must include maps showing ground water flow paths, or that the leakage enters a confined environment. A written determination by a NRCS engineer, or a professional engineer that a liner is not needed to prevent leakage of significant amounts of pollutants into waters in the state will be considered documentation that no significant hydrologic connection exists.

(17) Site-specific conditions shall be considered in the design and construction of liners. NRCS liner requirements or liners constructed and maintained in accordance with NRCS design specifications in Technical Note 716 (or its current equivalent) shall be considered to prevent hydrologic connections which could result in the contamination of waters in the state. Liners for retention structures should be constructed in accordance with good engineering practices. Where no site specific assessment has been done by a NRCS engineer, professional engineer, or qualified groundwater scientist the liner shall be constructed to have hydraulic conductivities no greater than 1×10^{-7} cm/sec, with a thickness of 1.5 feet or greater or its equivalency in other materials.

(18) Where a liner is installed to prevent hydrologic connection the permittee must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other protective devices. No trees shall be allowed to grow within the potential distance of the root zone. Any mechanical or structural damage to the liner will be evaluated by a NRCS engineer or a professional engineer within 30 days of the damage. Documentation of liner maintenance shall be kept with the pollution prevention plan. The permittee shall have a NRCS engineer, professional engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years. If notified by the executive director that significant potential exists for the contamination of waters in the state or drinking water, the permittee shall install a leak detection system or monitoring well(s) in accordance with that notice. Documentation of compliance with the notification must be kept with the pollution prevention plan, as well as all sampling data. In the event monitoring well(s) are required, the permittee must sample each monitor well annually for nitrate as nitrogen, chloride, and total dissolved solids using the methods outlined in the PPP, and compare the analytical results to the baseline data. If a ten percent deviation in concentration of any of the sampled constituents is found, the permittee must notify the executive director within 30 days of receiving the analytical results. Data from any monitoring wells must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.

(19) Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The pollution prevention plan must include all calculations, as well as, all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized for disposal of wastewater, the following requirements shall apply:

(A) The discharge or drainage of irrigated wastewater is prohibited where it will result in a discharge to waters in the state.

(B) When irrigation disposal of wastewater is used, application rates shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters should be based on the available nitrogen content, however, where local water quality is threatened by phosphorus, the permittee shall limit the application rate to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(C) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events (unless in accordance with subparagraph (E) of this paragraph).

(D) Irrigation practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site, contamination of waters in the state, and the occurrence of nuisance conditions.

(E) It shall be considered "Proper Operation and Maintenance" for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge wastewaters to land application sites for filtering prior to discharging to waters in the state. Only that portion of the total retention facility wastewater volume necessary to prevent overflow due to chronic or catastrophic rainfall shall be land applied for filtering prior to discharging to waters in the state. Monitoring and reporting requirements for such discharges shall be consistent with §321.195 of this title (relating to Monitoring and Reporting Requirements).

(F) Facilities including ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this subchapter and the pollution prevention plan.

(G) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this subchapter.

(H) Where land application sites are isolated from surface waters and ground waters and no potential exists for runoff to reach any waters in the state, application rates may exceed nutrient crop uptake rates only upon written approval of the executive director. No land application under this subsection shall cause or contribute to a violation of water quality standards or create a nuisance.

(20) Solids shall be removed in accordance with a pre-determined schedule for cleanout of all treatment lagoons to prevent the accumulation of solids from exceeding 50 percent of the original treatment volume. Removal of solids shall be conducted during favorable wind conditions that carry odors away from nearby receptors and the operator shall notify the regional office of the commission as soon as the lagoon cleaning is scheduled, but not less than 10 days prior to cleaning, and verification shall be reported to the same regional office within five days after the cleaning has been completed. At no time shall emissions from any activity create a nuisance. Any increase in odors associated with a properly managed cleanout under this subsection will be taken into consideration by the executive director when determining compliance with the provisions of this subchapter.

(21) Manure and Pond Solids Handling and Land Application. Storage and land application of manure shall not cause a discharge of significant pollutants to waters in the state, cause a water quality violation in waters in the state or cause a nuisance condition. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters and rain waters (runoff) from the concentrated animal feeding areas.

(22) Where the permittee decides to land apply manures and pond solids the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and any nutrient analysis data. Land application rates of wastes should be based on the available nitrogen content of the solid waste. However, where local water quality is threatened by phosphorus, the application rate shall be limited to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.

(23) If the waste (manure) is sold or given to other persons for disposal, the permittee must maintain a log of: date of removal from the CAFO; name of hauler; and amount, in wet tons, dry tons or cubic yards, of waste removed from the CAFO. (Incidental amounts, given away by the pick-up truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the permittee must make available to the hauler any nutrient sample analysis from that year.

(24) The procedures documented in the pollution prevention plan must ensure that the handling and disposal of wastes as defined in §321.182 of this title (relating to Definitions) comply with the following requirements:

(A) Adequate manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface disposal of manure in the 100-year flood plain, near water courses or recharge zone/feature is prohibited unless protected by adequate berms or other structures. The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited.

(B) When manure is stockpiled, it shall be stored in a well drained area with no ponding of water, and the top and sides of stockpiles shall be adequately sloped to ensure proper drainage. Runoff from manure storage piles must be retained on site.

(C) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events.

(D) Waste manure shall be applied to suitable land at appropriate times and rates. Discharge (run-off) of waste from the application site is prohibited. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions.

(E) All necessary practices to minimize waste manure transport to waters in the state shall be utilized and documented to the plan.

(F) Edge-of-field, grassed strips shall be used to separate water courses from runoff carrying eroded soil and manure particles. Land subject to excessive erosion shall be avoided.

(G) Where land application sites are isolated from surface waters and no potential exists for runoff to reach waters in the state, application rates may exceed nutrient crop uptake rates only upon written approval by the executive director. No land application under this subchapter shall cause or contribute to a violation of surface water quality standards, contaminate ground water or create a nuisance condition.

(H) Nighttime application of liquid and/or solid waste shall only be allowed in areas with no occupied residence(s) within 0.25 mile from the outer boundary of the actual area receiving waste application. In areas with an occupied residence within 0.25 mile from the outer boundary of the actual area receiving waste application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current occupants of such residences have in writing agreed to such nighttime applications.

(I) Accumulations of solids on concrete cow lanes at dairies and concrete swine pens, without slotted floors, shall be scraped or flushed at least once per week or in accordance with proper design and maintenance of the facility. Farrowing pens at swine facilities which are not scraped or flushed once per week shall be scraped/flushed after each group of sows have been removed from the facility.

(J) Buildings designed with mechanical flush/scrape systems shall be flushed/scraped at least once per week or as often as necessary to maintain the design efficiency. This provision would include, but would not be limited to swine and caged poultry operations.

(K) Earthen pens shall be designed and maintained to ensure good drainage and to prevent ponding.

(L) Facilities that utilize a solid settling basin(s) shall remove solids from the basin as often as necessary to maintain the design efficiency.

(25) The plan shall include an appropriate schedule for preventative maintenance. Operators will provide routine maintenance to their control facilities in accordance with a schedule and

plan of operation to ensure compliance with this subchapter. The permittee shall keep a maintenance log documenting that preventative maintenance was done. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (mechanical separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharge of pollutants to waters in the state or the creation of a nuisance condition.

(26) The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to waters in the state the pollution prevention plan shall identify measures used to limit erosion and pollutant runoff.

(27) The permittee shall document to the pollution prevention plan as soon as possible, any planned physical alterations or additions to the permitted facility. The permittee must insure that any change or facility expansion will not result in a discharge in violation of the provisions of this subchapter or will require an amendment to an existing permit-by-rule in force at the time of modification.

(28) Prior to commencing wastewater irrigation and/or waste application on land owned or operated by the permittee, and annually thereafter, the permittee shall collect and analyze representative soil samples of the wastewater and waste application sites according to the following procedures:

(A) Sampling procedures shall employ accepted techniques of soil science for obtaining representative and analytical results.

(B) Samples should be taken within the same 45 day time-frame each year.

(C) Obtain one composite sample for each soil depth zone per land management unit and per uniform (soils with the same characteristics and texture) soil type within the land management unit. For the purposes of this subchapter, a land management unit shall be considered to be an area associated with a single center pivot system or a tract of land on which similar soil characteristics exist and management practices are being used.

(D) Composite samples shall be comprised of 10 - 15 randomly sampled cores obtained from each of the following soil depth zones:

(i) Zone 1: 0-6 inches

(ii) Zone 2: 6 - 24 inches

(E) Soil samples shall be submitted to a soil testing laboratory along with a previous crop history of the site, intended crop use and yield goal. Soil reports should include nutrient recommendations for the crop yield goal.

(F) Chemical/nutrient parameters and analytical procedures for laboratory analysis of soil samples from wastewater and waste application sites shall include the following:

(I) Nitrate reported as nitrogen in parts per million (ppm)

(ii) Phosphorus (extractable, ppm) - Texas Agricultural Extension Service Soil Testing Laboratory - TAMU extractant, P1 Weak Bray, or Mehlich III extraction

(iii) Potassium (extractable, ppm)

(iv) Sodium (extractable, ppm)

(v) Magnesium (extractable, ppm)

(vi) Calcium (extractable, ppm)

(vii) Soluble salts/electrical conductivity (dS/m) - determined from extract of 2:1 (v/v) water/soil mixture

(viii) Soil water pH

(G) When results of the annual soil analysis for extractable phosphorus in subparagraph (F) of this paragraph indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in the 0-6 inch depth (Zone 1) for a particular waste and/or wastewater disposal field, then the permittee shall limit waste and/or wastewater application on that site to the recommended P rates based on crop uptake. Waste and/or wastewater application shall remain limited to recommended P rates until soil analysis indicates extractable phosphorus levels have been reduced below 200 ppm P.

(29) The permittee shall annually analyze at least one (1) representative sample of irrigation wastewater and one (1) representative sample of solid waste for total nitrogen, total phosphorus and total potassium.

(30) Results of initial and annual soils, wastewater and solid waste analyses shall be maintained on-site as part of the pollution prevention plan.

(31) Permittees submitting applications for renewal or expansion of existing facilities authorized under this subchapter to utilize a playa lake as a wastewater retention structure shall within ninety (90) days of the effective date of the renewal, submit a ground water monitoring plan to the Agriculture Permitting and Enforcement Section, Agriculture and Rural Assistance Division of the Texas Natural Resource Conservation Commission. At a minimum, the ground water monitoring plan shall specify procedures to annually collect a ground water sample from each well providing water for the facility, have each sample analyzed for chlorides and nitrates and compare those values to background values for each well.

§321.193. Best Management Practices.

The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding operations owners/ operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a NRCS plan are equivalent or more protective the permittee may refer to the NRCS plan as documentation of compliance with the BMPs required by this subchapter.

(1) Control facilities must be designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year, 24-hour rainfall event for the location of the point source. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. Waste control facilities must be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and all other wastes which will enter or be stored in the retention structure.

(2) Facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations.

(3) Open lots and associated wastes shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25-year, 24-hr. rainfall event occurs.

(4) New or expanding facilities shall not be built in any stream, river, lake, wetland, or playa lake (except as defined by and in accordance with the Texas Water Code §26.048).

(5) No waters in the state shall come into direct contact with the animals confined on the concentrated animal feeding operation. Fences and other methods may be used to restrict such access.

(6) Wastewater retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.

(7) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. Facility wastewater retention facilities, holding pens or waste/wastewater disposal sites shall not be located closer than 500 feet of a public water supply well or 150 of a private water wells, except in accordance with Chapter 338 of this title (relating to Water Well Drillers).

(8) Waste handling, treatment, and management shall not create a nuisance condition or an environmental or a public health hazard; shall not result in the contamination of drinking water; shall conform with State guidelines and/or regulations for the protection of surface and ground water quality.

(9) Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent significant pollutants from being discharged into waters in the state or creation of a nuisance condition.

(10) The operator shall prevent the discharge of pesticide contaminated waters into waters in the state. 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 significant pollutants from entering the waters in the state or create a nuisance condition.

(11) Dead animals shall be properly disposed of within three (3) days unless otherwise provided for by the executive director. Animals shall be disposed of in a manner to prevent contamination of waters in the state or create a nuisance or public health hazard.

(12) Collection, storage, and disposal of liquid and solid waste should be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site shall be secondary to the proper disposal of waste and wastewater.

(13) Appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutant shall be taken. Where potential spills can occur materials, handling procedures and storage shall be specified. Procedures for cleaning up spills shall be identified and the necessary equipment to implement a clean up shall be available to personnel.

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Effective July 13, 1995

§321.194. Other Requirements.

(a) Education and Training.

(1) Any CAFO owner/operator with greater than 300 animal units but less than or equal to 1000 animal units and located within an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas) shall either file an application and obtain authorization under this subchapter or, within twelve months of coming under the provisions of §321.183(b) or (l) of this title (relating to Applicability), the owner/operator or his designee with operational responsibilities shall complete an eight hour course or its equivalent on animal waste management. In addition, that owner/operator shall also complete at least eight additional hours of continuing animal waste management education for each two year period after the first twelve months. The minimum criteria for the initial eight hours and the subsequent eight hours of continuing animal waste management education shall be developed by the executive director and the Texas Agricultural Extension Service. Verification of the date and time(s) of attendance and completion of required training shall be documented to the pollution prevention plan.

(2) Where the employees are responsible for work activities which relate to compliance with provisions of this subchapter, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal.

Employee training shall inform personnel at all levels of responsibility of the general components and goals of the pollution prevention plan. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary recordkeeping requirements, and spill response and clean up. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the pollution prevention plan shall identify periodic dates for such training.

(b) Inspections and Recordkeeping. The operator or the person named in the pollution prevention plan as the individual responsible for drafting and implementing the plan shall be responsible for inspections and recordkeeping.

(c) Recordkeeping and Internal Reporting Procedures. Incidents such as spills, other discharges or nuisance conditions, along with other information describing the pollution potential and quality of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records must be kept on site for a minimum of three years.

(d) Visual Inspections. The authorized person shall inspect designated equipment and facility areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system or the creation of a nuisance. A follow-up procedure shall be used to ensure that appropriate action has been taken in response to the inspection.

(e) Site Inspection. A complete inspection of the facility shall be done and a report documenting the findings of the inspection made at least once/year. The inspection shall be conducted by the authorized person named in the pollution prevention plan, to verify that the description of potential pollutant sources is accurate; the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants and avoid nuisance conditions are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained as part of the pollution prevention plan. Records of inspections shall be maintained for a period of three (3) years.

(f) Additional Requirements. No condition of this authorization shall release the permittee from any responsibility or requirements under other statutes or regulations, Federal, State or Local.

(g) Audits. Any CAFO owner/operator with greater than 300 animal units but less than or equal to 1000 animal units and located within an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas) shall either file an application and obtain authorization under this subchapter or have an independent third party conduct a detailed audit of the owner's/operator's facility at least once every five years beginning with the date the facility initially came under the provisions of this subchapter. The minimum criteria of the audit shall be developed by the executive director and the Texas Agricultural Extension Service. Any CAFO owner/operator having an audit conducted in accordance with this section shall notify the executive director of the initial date of an audit inspection. Such notification shall be made to the executive director not less than five calendar days after the date of initial inspection. The final audit inspection shall be completed within 10 days of the initial date, unless an extension is agreed to in writing by the executive director.

(h) Protection from Liability to the State. Any CAFO owner/operator who conducts the audit identified in subsection (g) of this section, in accordance with the following requirements, shall not be liable to the state for violations identified during a subsequent inspection by the state, if the management circumstances which form the basis for the violation are identified as problems in the audit and are the subject of an on-going workplan, agreed to by the executive director, to correct the problem. An audit report and detailed workplan must be provided to the executive director for agreement within ninety days of the final day of the audit inspection and shall provide the following information:

(1) Identify all problems which could contribute to a detrimental impact on air, surface or ground water quality;

(2) Provide a workplan which specifically lists action to be taken to assure that the problems identified are solved so that these circumstances can no longer contribute to detrimental impacts on air, surface or ground water quality; and

(3) Provide a detailed schedule showing the initiation and completion date for each item on the list of actions to be taken. Within thirty days of actual receipt of an audit report and workplan, the executive director shall inform the owner/ operator submitting the audit report and workplan that the executive director agrees that the workplan submitted solves the problems identified in the audit report within a reasonable period of time or the executive director shall inform the owner/operator that it does not. If the executive director does not agree that the workplan will solve the problems identified within a reasonable period of time, the executive director shall inform the owner/operator specifically what changes must be made to the workplan in order to obtain such agreement. The executive director shall presume agreement with the owner/operator on the needed changes unless the owner/operator notifies the executive director in writing. Unless agreement can be reached between the executive director and the owner/operator within thirty days of the date the executive director notifies the owner/operator of disagreement, then protection pursuant to this subsection shall not apply. Upon agreement between the executive director and the owner/operator on the workplan, the owner/operator shall have a protection from liability from the state for any violation identified in an inspection by the state subsequent to the initial audit inspection date to the completion date of the items in the workplan which specifically address the cause of the violations.

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§321.195. Monitoring and Reporting Requirements.

(a) If, for any reason, there is a discharge to waters in the state, the permittee is required to notify the executive director orally within 24 hours and in writing within 14 working days of the discharge from the retention facility or any component of the waste handling or disposal system. In addition, the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

(1) A description and cause of the discharge, including a description of the flow path to the receiving water body. Also, an estimation of the flow and volume discharged.

(2) The period of discharge, including exact dates and times, and, if not corrected the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge.

(3) If caused by a precipitation event(s), information from the on site rain gauge concerning the size of the precipitation event.

(4) Unless otherwise directed by the executive director, facilities authorized under this subchapter shall sample and analyze all discharges from retention facilities. Sample analysis shall be documented to the pollution prevention plan.

(5) Samples shall consist of grab samples taken from the over-flow or discharges from the retention structure. A minimum of one sample shall be taken from the initial discharge (within 30 minutes). The sample shall be taken and analyzed in accordance with EPA approved methods for water analysis listed in 40 CFR 136. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge.

(6) Sample analysis of the discharge must, at a minimum, include the following: Fecal Coliform bacteria; 5-day Biochemical Oxygen Demand (BOD5); Total Suspended Solids (TSS); ammonia nitrogen; and any pesticide which the operator has reason to believe could be in the discharge.

(7) In lieu of discharge sampling data, the permittee must document description of why discharge samples could not be collected when the discharger is unable to collect samples 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 storms, etc.). Once dangerous conditions have passed, the permittee shall collect a sample from the retention structure pond or lagoon. The sample shall be analyzed in accordance with paragraph (6) of this subsection.

(b) All discharge information and data will be made available to the executive director upon request. Signed copies of monitoring reports shall be submitted to the executive director if requested at the address specified in the request.

(c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the provisions of this subchapter, including reports of compliance or noncompliance shall be subject to administrative penalties not to exceed \$10,000 per violation. Such person(s) may also be subject to civil and criminal penalties pursuant to the Texas Water Code, §26.122 and §26.213.

(d) The permittee shall retain copies of all records required by this subchapter for a period of at least three years from the date reported. This period may be extended by request of the executive director at any time.

(e) The permittee shall furnish to the executive director, within a reasonable time, any information which the executive director may request to determine compliance with the provisions of this

subchapter. The permittee shall also furnish to the executive director, upon request, copies of records required to be kept by the provisions of this subchapter.

(f) When the permittee becomes aware that they failed to submit any relevant facts or submitted incorrect information in any report to the executive director, they shall promptly submit such facts or information.

(g) All reports or information submitted to the executive director shall be signed and certified in accordance with §305.44 of this title (relating to Signatories to Applications).

(h) The permittee shall maintain ownership, operation or control over the retention facilities, disposal areas and control facilities identified in the final site plan submitted with the application under §321.184 of this title (relating to Application Requirements). In the event permittee loses ownership, operation or control of any of these areas, the permittee shall notify the executive director prior to such loss of control and immediately request and file an application to amend the existing permit-by-rule, an application for a new permit-by-rule under this subchapter or present the executive director with a plan to cease all concentrated animal feeding operations at that site.

(i) Any permittee required to obtain authorization under §321.183 of this title (relating to Applicability) shall locate and maintain all facilities in accordance with the final site plan submitted with the application as required under §321.184 of this title (relating to Application Requirements). In the event the permittee does not properly locate and maintain such facilities in accordance with the final site plan they shall be deemed in noncompliance with the provisions of this subchapter.

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§321.196. Registration.

All new animal feeding operations which confine more than 300 animal units and/or any animal feeding operation which confines more than 300 head of a species or combination of species not specifically listed under the definition of CAFO as stated in §321.182 of this title (relating to Definitions) and have a potential to discharge into the waters in the state shall notify the executive director of their business name, physical location including a map or hand drawn sketch, mailing address and number of head in confinement. Such notification shall be in writing and signed by the owner/operator and shall be submitted not later than 180 days of the effective date of these rules or commencement of operation, whichever is later. Additionally, should an animal feeding operation covered by this section change ownership or substantially change the number of head in confinement, that operator shall submit an amended notification. No fees are associated with registration of animal feeding operations under this section.

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§321.197. Dairy Outreach Program Areas.

For the purposes of this subchapter involve all of the following counties: Erath, Bosque, Comanche, Hamilton, Johnson, Hopkins, Wood and Rains. The commission shall review the areas designated under this section on at least a triennial basis to determine whether counties should be deleted or other areas should be added. Areas under this section shall be added or deleted in accordance with the rulemaking process.

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§321.198. Effect of Conflict or Invalidity of Rule.

(a) If any provision of this subchapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the provisions contained in this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.

(b) To the extent of any irreconcilable conflict between provisions of this subchapter and other rules of the commission, the provisions of this subchapter shall supersede.

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