



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Application Restrictions Statutes & Regulations

Texas

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Application Restrictions

STATE OF TEXAS

1) Tex. Water Code §§ 26.001 (10), (13), (14), (21), 26.011, .0136, .027; 30 TAC §§ 321.38(28), 321.36(e), 321.40, 321.46(a)

2) Tex. Water Code §§ 26.001 (10), (13), (14), (21), 26.011, .0136, .027; 30 TAC §§ 321.32(28), 321.47(c), (f)

The statutes and Constitution are current through the 2018 regular and special legislative sessions. The statutes are subject to changes by the Texas Legislative Council.

1) Tex. Water Code §§ 26.001 (10), (13), (14), (21), 26.011, .0136, .027; 30 TAC §§ 321.38(28), 321.36(e), 321.40, 321.46(a)

Sec. 26.001. Definitions.

As used in this chapter:

[. . .]

(10) “Agricultural waste” means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned

or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

[. . .]

(13) “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(14) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

[. . .]

(21) “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

[. . .]

Sec. 26.011. In General.

Except as otherwise specifically provided, the commission shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the commission in the public interest. The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities. This chapter does not apply to discharges of oil covered under Chapter 40, Natural Resources Code.

Sec. 26.0136. Water Quality Management.

(a) The commission is the agency with primary responsibility for implementation of water quality management functions, including enforcement actions, within the state. Water quality management functions shall be oriented on a watershed basis in consideration of the priorities identified by river authorities and basin steering committees. The commission by rule shall coordinate the water quality responsibilities of river authorities within each watershed and shall, where appropriate, delegate water quality functions to local governments under Section 26.175 of this code. The State Soil and Water Conservation Board shall coordinate and administer all programs for abating agricultural or silvicultural nonpoint source pollution, as provided by Section 201.026, Agriculture Code.

(b) Nothing in this section is intended to enlarge, diminish, or supersede the water quality powers, including enforcement authority, authorized by law for river authorities, the State Soil and Water Conservation Board, and local governments. Nothing in this section is intended to enlarge, diminish, or supersede the responsibilities of the Texas Agricultural Extension Service and the Texas Agricultural Experiment Station to conduct educational programs and research regarding nonpoint source pollution and related water resource and water quality matters.

(c) The commission shall establish rules to make the optimum use of state and federal funding and grant programs related to water quality programs of the commission.

(d) In this section, “river authority” has the meaning assigned by Section 26.0135(i) of this code.

Sec. 26.027. Commission May Issue Permits.

(a) The commission may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The commission may refuse to issue a permit when the

commission finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the commission finds that issuance of the permit would interfere with the purpose of this chapter.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the commission containing all information reasonably required by the commission. The commission shall, at minimum, require an applicant who is an individual to provide:

- (1) the individual's full legal name and date of birth;
- (2) the street address of the individual's place of residence;
- (3) the identifying number from the individual's driver's license or personal identification certificate issued by the state or country in which the individual resides;
- (4) the individual's sex; and
- (5) any assumed business or professional name of the individual filed under Chapter 71, Business & Commerce Code.

(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

(d) The commission may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the commission may have with respect to the control of water quality. The commission may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter.

§ 321.32. Definitions

All definitions in Texas Water Code (TWC), Chapter 26 and Chapter 3 and Chapter 305 of this title (relating to Definitions and Consolidated Permits) shall apply to this subchapter and are incorporated by reference. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[. . .]

(28) Land application--The act of applying manure, sludge, or wastewater associated with the animal feeding operation including distribution to, or incorporation into, the soil mantle primarily for beneficial use purposes.

[. . .]

§ 321.36. Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feeding Operations (CAFOs)

[. . .]

(e) Buffers for LMUs. A sinkhole shall be protected with a 100-foot buffer from manure, sludge, and wastewater application. Alternatively, the CAFO may substitute a 35-foot wide vegetative buffer around a sinkhole where alternative conservation practices or field-specific conditions will provide pollutant reductions equivalent to or better than the reductions that would be achieved by the 100-foot buffer.

[. . .]

§ 321.40. Concentrated Animal Feeding Operation (CAFO) Land Application Requirements

(a) The purpose of this section is to describe the land application requirements that apply to concentrated animal feeding operations (CAFOs).

(b) The land application of manure, sludge, or wastewater at agronomic rates and hydrologic needs shall not be considered surface disposal and is not prohibited.

(c) Manure, sludge, or wastewater may be applied to the areas in the 100-year flood plain at agronomic rates not to exceed the hydrologic needs of the crop.

(d) Discharge of manure, sludge, or wastewater from a land management unit (LMU) is prohibited and shall not cause or contribute to a violation of surface water quality standards, contaminate groundwater, or create a nuisance condition.

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

(f) Land application shall not occur when the ground is frozen or saturated or during rainfall events unless in accordance with § 321.39(b)(3) of this title (relating to Operational Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)) or as approved by the commission.

(g) The CAFO operator shall not locate a new LMU within the required well buffer zones identified in § 321.38(b) of this title (relating to Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)), unless additional wellhead protective measures are implemented that will prevent pollutants from entering the well and contaminating groundwater. An exception to the full well

buffer zone for a private drinking water well or a water well used exclusively for agricultural irrigation may be approved by the executive director if a licensed Texas professional engineer or licensed Texas professional geoscientist provides accurate documentation showing that additional wellhead protective measures will be or have been implemented that will prevent pollutants from entering the well and contaminating groundwater. Additional protective measures may include a sanitary seal, annular seal, a steel sleeve, or surface slab.

(h) Vegetative buffer strips shall be maintained in accordance with Natural Resources Conservation Service (NRCS) Practice Standard Code 393. The minimum buffer shall be no less than 100 feet of vegetation to be maintained between manure, sludge, or wastewater application areas and water in the state. A buffer is not required for wastewater irrigation when applied by low-pressure, low-profile center pivot irrigation systems in areas of the state where the annual average rainfall is less than 25 inches per year. Land application of manure, sludge, and wastewater into surface water in the state is an unauthorized discharge and is prohibited.

(i) CAFOs introducing wastewater or chemicals to water wellheads for the purpose of irrigation shall install backflow prevention devices in accordance with requirements contained in 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers) and Chapter 290 of this title (relating to Public Drinking Water), as appropriate.

(j) Nighttime application of manure, sludge, or wastewater by a CAFO shall be allowed only in areas with no occupied residence(s) within 1/4 mile from the outer boundary of the actual area receiving manure, sludge, or wastewater application. In areas with an occupied residence within 1/4 mile from the outer boundary of the actual area receiving manure, sludge, or wastewater application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current resident owner or lessee of such residences have agreed in writing to specified nighttime applications.

(k) Nutrient requirement.

(1) Any land application of manure, sludge, and wastewater shall not exceed the planned crop requirements. Land application rates of manure, sludge, or wastewater shall be based on the total nutrient concentration, on a dry weight basis, where applicable.

(2) Critical phosphorus level. Land application of manure, sludge, or wastewater shall not exceed the crop removal rate when results of the annual soil analysis for extractable phosphorus indicate:

(A) a level greater than 200 parts per million (ppm) for a particular LMU;
or

(B) a level greater than 350 ppm for an LMU where the average annual rainfall is 25 inches or less and erosion control is adequate to keep erosion at the soil loss tolerance (T) or less and the closest edge of the field is more than one mile from a named stream; or

(C) if ordered by the executive director to do so in order to protect water in the state.

(3) Dairy CAFOs located in a major sole-source impairment zone shall develop a nutrient utilization plan (NUP) when the annual soil analysis for extractable phosphorus in zone 1 (0 - 6-inch incorporated; 0 - 2 or 2 - 6-inch if not incorporated) depth in an LMU is greater than 200 ppm. State-only CAFOs shall develop a NUP when the annual soil analysis for an LMU indicates the critical phosphorus levels in paragraph (2) of this subsection have been exceeded. A nutrient management plan, based on crop removal certified as meeting the NRCS Practice Standard Code 590 is equivalent to the requirements for a NUP.

(A) If an operator is required to develop a NUP, the operator shall cease land application of manure, sludge, or wastewater to the affected area and may resume only after a NUP is implemented.

(B) The NUP must be developed and certified by: (i) an employee of the NRCS; (ii) a nutrient management specialist certified by the NRCS; (iii) the Texas State Soil and Water Conservation Board; (iv) Texas AgriLife Extension Service; (v) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas; (vi) a Certified Professional Agronomist certified through the certification program of the American Society of Agronomy; (vii) a Certified Professional Soil Scientist certified through the certification program of the Soil Science Society of America; or (viii) a licensed geoscientist-soil scientist in Texas after approval by the executive director based on a determination by the executive director that another person or entity identified in this subparagraph cannot develop the plan in a timely manner.

(C) After a NUP is implemented, the operator shall land apply in accordance with the NUP until soil phosphorus is reduced below the critical phosphorus level. Thereafter, the operator of a dairy CAFO located in a major sole-source impairment zone shall implement the requirements of the nutrient management plan certified in accordance with § 321.36(c) of this title (relating to Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feeding Operations (CAFOs)) and the operator of other state-only CAFOs must follow the requirements in this section.

(D) Land application under the terms of the NUP may begin 30 days after the plan is filed with the executive director, unless before that time the

executive director has returned the plan for failure to comply with all the requirements of this subsection.

(l) Runoff from an LMU. Where manure, sludge, or wastewater is applied in accordance with a site-specific nutrient management plan that complies with § 321.36(c) of this title or when the land application conforms to this section, precipitation-related runoff from LMUs is authorized as:

(1) a pollutant discharge if the source is land associated with a CAFO in a major sole-source impairment zone; or

(2) an agricultural stormwater discharge for all other sources.

(m) Sampling and Testing.

(1) Initial sampling. Before commencing land application of manure, sludge, or wastewater on LMUs and before resuming land application on LMUs where manure, sludge, or wastewater was not applied during the preceding year, the operator shall:

(A) collect and analyze at least one representative sample of manure, sludge (if applicable), and wastewater for total nitrogen, total phosphorus, and total potassium;

(B) collect and analyze at least one representative soil sample from each LMU according to the procedures in paragraphs (4) and (5) of this subsection; and

(C) utilize the results of these analyses in determining application rates for manure, sludge, and wastewater.

(2) Annual Sampling. The operator shall:

(A) collect and analyze at least one representative sample of manure, sludge (if applicable), and wastewater for total nitrogen, total phosphorus, and total potassium;

(B) collect and analyze at least one representative soil sample from each LMU where manure, sludge, or wastewater was applied during the preceding year according to the procedures in paragraphs (4) and (5) of this subsection; and

(C) utilize the results of these analyses in determining application rates for manure, sludge, and wastewater.

(3) The operator shall make the most recent nutrient analysis available to any recipient of manure, sludge, or wastewater.

(4) Sampling procedures. The operator shall employ sampling procedures using accepted techniques of soil science for obtaining representative samples and analytical results.

(A) Samples shall be collected using approved methods described in the agency's guidance RG-408 entitled "Soil Sampling for Concentrated Animal Feeding Operations."

(B) Samples shall be collected by the operator or its designee and analyzed by a soil testing laboratory annually, except when crop rotations or inclement weather require a change in the sampling time. The pollution prevention plan shall contain documentation to explain the reasons for adjusting the sampling timeframe.

(C) Obtain one composite sample for each LMU and per uniform soil type (soils with the same characteristics and texture) within the LMU.

(D) Composite samples shall be comprised of 10 - 15 randomly sampled cores at a depth of zero to six inches.

(5) Laboratory analysis. The operator shall have a laboratory analysis of the soil samples performed for physical and chemical parameters to include: nitrate reported as nitrogen in ppm; phosphorus (extractable, ppm, using Mehlich III extractant with Inductively Coupled Plasma analysis); potassium (extractable, ppm); sodium (extractable, ppm); magnesium (extractable, ppm); calcium (extractable, ppm); soluble salts (ppm) or electrical conductivity (deciSiemens/meter (dS/m) or millimhos/cm (mmhos/cm) determined from extract of 2:1 volume to volume (v/v) water/soil mixture); and soil water pH (soil:water, 1:2 ratio).

§ 321.46. Concentrated Animal Feeding Operation (CAFO) Pollution Prevention Plan, Site Evaluation, Recordkeeping, and Reporting

(a) Pollution prevention plan (PPP).

(1) A permit or authorization will establish requirements for the development of a PPP. PPPs shall be prepared in accordance with good engineering practices and shall include measures necessary to limit the discharge of pollutants to or adjacent to water in the state. 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 development, implementation, operation, maintenance, inspections, recordkeeping, and revision of the PPP. The activities

and responsibilities of the pollution prevention personnel shall address all aspects of the facility's PPP.

(2) The plan shall be signed by the operator or other signatory authority in accordance with § 305.44 of this title (relating to Signatories to Applications), and the plan shall be retained on site.

(3) Upon completion of a PPP review, the executive director may notify the operator of a concentrated animal feeding operation (CAFO) 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 operator shall make changes to the plan within 90 days after such notification, unless otherwise provided by the executive director.

(4) The operator of the CAFO shall revise the plan:

(A) before any change in the acreage or boundaries of land management units (LMUs);

(B) before any increase in the maximum number of animals;

(C) before operation of any new control facilities;

(D) before any change which has a significant effect on the potential for the discharge of pollutants to water in the state;

(E) if the PPP is not effective in achieving the general objectives of controlling discharges of pollutants from the production area or LMU(s);
or

(F) within 90 days following written notification from the executive director that the plan does not meet one or more of the minimum requirements of this section.

(5) Where design, planning, construction, operation and maintenance, or other documentation equivalent to PPP requirements are contained in site specific-plans prepared and certified by the Natural Resources Conservation Service (NRCS), Texas State Soil and Water Conservation Board, or their designee, that information may be used to document best management practices (BMPs) or applicable portions of the technical requirements in this subchapter. Where provisions in the certified plan are substituted for applicable BMPs or portions of the PPP, the PPP must refer to the appropriate section of the certified plan. If the PPP contains a reference to a certified plan, a copy of the certified plan must be kept with the PPP.

(6) Potential pollutant sources include any activity or material of sufficient quantity that may reasonably be expected to add pollutants to surface water in the state from the facility. The owner shall conduct a thorough site inspection of the facility to identify all potential pollutant sources. The inspection shall include all land that is part of the production area and LMUs. An evaluation of pollutant sources shall identify the types of potential pollutant sources, provide a description of the pollutant sources, and indicate all measures that will be used to prevent contamination from the pollutant sources.

(7) The operator shall maintain and update the following items as part of the PPP:

(A) a site map, showing the production area and include, at a minimum, pens and open lots, barns, berms, permanent manure storage areas, composting areas, control facilities including retention control structures (RCSs), water wells (abandoned and in use), surface water in the state, and dead animal burial sites; including a depiction of buffer zones and setbacks;

(B) LMU Map, showing the boundary and acreage of each LMU; all buffer zones, the location of the production area, water wells (abandoned and in use) that are onsite or within 500 feet of the facility boundary, all surface water in the state located onsite and within one mile of the facility boundary, and the facility boundary.

(C) soil, crop, and crop nutrient information;

(D) a description of land application procedures and equipment used; and

(E) a description of BMPs utilized to minimize the entry of uncontaminated runoff into the control facility and RCS.

[. . .]

2) Tex. Water Code §§ 26.001 (10), (13), (14), (21), 26.011, .0136, .027; 30 TAC §§ 321.32(28), 321.47(c), (f)

Sec. 26.001. Definitions.

As used in this chapter:

[. . .]

(10) “Agricultural waste” means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term:

(A) includes:

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(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated range land, pasture land, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

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(13) “Pollutant” means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, filter backwash, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term:

(A) includes:

(i) tail water or runoff water from irrigation associated with an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone as defined by Section 26.502; or

(ii) rainwater runoff from the confinement area of an animal feeding operation or concentrated animal feeding operation that is located in a major sole source impairment zone, as defined by Section 26.502; and

(B) does not include tail water or runoff water from irrigation or rainwater runoff from other cultivated or uncultivated rangeland, pastureland, and farmland or rainwater runoff from an area of land located in a major sole source impairment zone, as defined by Section 26.502, that is not owned or controlled by an operator of an animal feeding operation or concentrated animal feeding operation on which agricultural waste is applied.

(14) “Pollution” means the alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

[. . .]

(21) “Point source” means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

[. . .]

Sec. 26.011. In General.

Except as otherwise specifically provided, the commission shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the commission in the public interest. The commission has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities. This chapter does not apply to discharges of oil covered under Chapter 40, Natural Resources Code.

Sec. 26.0136. Water Quality Management.

(a) The commission is the agency with primary responsibility for implementation of water quality management functions, including enforcement actions, within the state. Water quality management functions shall be oriented on a watershed basis in consideration of the priorities identified by river authorities and basin steering committees. The commission by rule shall coordinate the water quality responsibilities of river authorities within each watershed and shall, where appropriate, delegate water quality functions to local governments under Section 26.175 of this code. The State Soil and Water Conservation Board shall coordinate and administer all programs for abating

agricultural or silvicultural nonpoint source pollution, as provided by Section 201.026, Agriculture Code.

(b) Nothing in this section is intended to enlarge, diminish, or supersede the water quality powers, including enforcement authority, authorized by law for river authorities, the State Soil and Water Conservation Board, and local governments. Nothing in this section is intended to enlarge, diminish, or supersede the responsibilities of the Texas Agricultural Extension Service and the Texas Agricultural Experiment Station to conduct educational programs and research regarding nonpoint source pollution and related water resource and water quality matters.

(c) The commission shall establish rules to make the optimum use of state and federal funding and grant programs related to water quality programs of the commission.

(d) In this section, “river authority” has the meaning assigned by Section 26.0135(i) of this code.

Sec. 26.027. Commission May Issue Permits.

(a) The commission may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The commission may refuse to issue a permit when the commission finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the commission finds that issuance of the permit would interfere with the purpose of this chapter.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the commission containing all information reasonably required by the commission. The commission shall, at minimum, require an applicant who is an individual to provide:

- (1) the individual’s full legal name and date of birth;
- (2) the street address of the individual’s place of residence;
- (3) the identifying number from the individual’s driver’s license or personal identification certificate issued by the state or country in which the individual resides;
- (4) the individual’s sex; and
- (5) any assumed business or professional name of the individual filed under Chapter 71, Business & Commerce Code.

(c) A person may not commence construction of a treatment facility until the commission has issued a permit to authorize the discharge of waste from the facility, except with the approval of the commission.

(d) The commission may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the commission may have with respect to the control of water quality. The commission may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter.

§ 321.32. Definitions

All definitions in Texas Water Code (TWC), Chapter 26 and Chapter 3 and Chapter 305 of this title (relating to Definitions and Consolidated Permits) shall apply to this subchapter and are incorporated by reference. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

[. . .]

(28) Land application--The act of applying manure, sludge, or wastewater associated with the animal feeding operation including distribution to, or incorporation into, the soil mantle primarily for beneficial use purposes.

[. . .]

§ 321.47. Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated As Concentrated Animal Feeding Operations (CAFOs)

[. . .]

(c) General requirements.

(1) An AFO operator must locate, construct, and manage the control facility, alternative treatment practice, and land management unit (LMU) in a manner that will protect surface and groundwater quality.

(2) An AFO operator must prevent nuisance conditions and minimize odor conditions in accordance with the requirements of § 321.31(b) of this title (relating to Manure, Litter, and Wastewater Discharge and Air Emission Limitations).

(3) Proper pen drainage shall be maintained at all times. Earthen pen areas shall be maintained to ensure good drainage by scraping uncompacted manure and shaping pen surfaces as necessary to minimize odors and ponding.

(4) An AFO shall not expand operations, either in size or numbers of animals, before amending or enlarging the manure handling procedures and structures to accommodate all additional manure that will be generated by the expanded operations.

(5) As applicable to the operation, the production area of a new or expanding AFO must comply with the requirements of § 321.41 of this title (relating to Special Requirements for Discharges to a Playa).

(6) All control facilities, alternative treatment practices, holding pens, and retention control structures (RCSs) must be located outside of the 100-year flood plain unless the structures are protected from inundation and damage that may occur during the 100-year flood event.

(7) Where applicable, equivalent measures contained in a site-specific plan which meet the requirements of this subchapter may be substituted for applicable best management practices and/or portions of the technical requirements in this subchapter. Equivalent measures may be contained in:

(A) United States Department of Agriculture (USDA) - NRCS Field Office Technical Guide for Texas; or

(B) TSSWCB rules; or

(C) a certified water quality management plan certified by the TSSWCB; or

(D) a comprehensive nutrient management plan (CNMP) certified by the TSSWCB, the USDA - NRCS, or their designee.

(8) The AFO operator shall adhere to the well buffer requirements in § 321.38(b) of this title (relating to Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)) and § 321.40(g) of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements).

[. . .]

(f) Land application.

(1) The runoff of manure, sludge, or wastewater to water in the state as the result of the application of manure, sludge, or wastewater from an AFO is authorized

provided the land application activity is implemented in accordance with a plan for nutrient management detailed in this section.

(2) The AFO operator shall apply manure, sludge, and wastewater uniformly to suitable land at appropriate times and at agronomic rates. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation, and soil conditions.

(3) The AFO operator shall develop and utilize the information in this paragraph for land application unless a nutrient management plan (NMP) is developed and implemented. At that time, the NMP must be followed for land application. The AFO operator must adhere to the following:

(A) a site map showing the location of all LMUs;

(B) the location, description, and limitations of the major soil types within the identified LMUs, and a plan to address the soil limitations;

(C) crop types and rotations to be implemented on an annual basis;

(D) predicted yield goals based on the major soil types within the identified LMUs;

(E) procedures for calculating nutrient budgets to be used to determine application rates;

(F) a detailed description of the type of equipment and method of application to be used in applying the manure, sludge or wastewater; and

(G) projected rates and timing of application of the manure, sludge, and wastewater as well as other sources of nutrients that will be applied to the LMUs.

(4) Discharge of manure, sludge, or wastewater from the LMU is prohibited and shall not cause or contribute to a violation of surface water quality standards, contaminate groundwater, or create a nuisance condition.

(5) Application rates of manure, sludge, and wastewater shall not exceed the crop requirement of the crop or planned crop planting. Land application rates of manure sludge, and wastewater shall be based on the available nutrient content of the manure, sludge, and wastewater.

(6) Land application shall not occur when the ground is frozen or saturated or during rainfall events, unless in accordance with § 321.39(b)(3) of this title (relating to Operational Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)).

(7) Irrigation practices shall be managed so as to minimize ponding or puddling of wastewater on the site, prevent discharge of tailwater to waters in the state, prevent pollution of waters in the state, and prevent the occurrence of nuisance conditions.

(8) The land application of manure, sludge, and wastewater at agronomic rates shall not be considered surface disposal and is not prohibited.

(9) Manure, sludge, or wastewater may be applied to the areas in the 100-year flood plain at agronomic rates not to exceed the hydrologic needs of the crop.

(10) The AFO operator shall develop and maintain the calculations and assumptions used for determining land application rates and all nutrient analysis data.

(11) The AFO operator shall annually analyze at least one representative sample of irrigation wastewater and sludge, if applicable, and one representative sample of manure for total nitrogen, total phosphorus, and total potassium.

(12) Vegetative buffer strips shall be no less than 100 feet of vegetation to be maintained between manure, sludge, or wastewater application areas and surface water and watercourses. The AFO operator shall maintain the buffer strips in accordance with NRCS guidelines. A buffer is not required for wastewater irrigation when applied by low-pressure, low-profile center pivot irrigation systems in areas of the state where the annual average rainfall is less than 25 inches per year. Land application of manure, sludge, and wastewater into surface water in the state is an unauthorized discharge and is prohibited.

(13) Manure and sludge storage capacity requirements based upon manure and sludge production, land availability, and NRCS or equivalent standards shall be provided.. Manure or sludge stored for more than 30 days must be stored within the drainage area of an RCS, or stored in a manner (i.e. storage shed, bermed area, tarp covered area, etc.) that otherwise prevents contaminated stormwater runoff from the storage area. Storage for more than 30 days is prohibited in the 100-year flood plain.

(14) Temporary storage of manure and sludge shall not exceed 30 days and is allowed only in LMUs or an RCS drainage area. Temporary storage of manure or sludge in the 100-year flood plain, near water courses or recharge features is prohibited unless protected from inundation and damage that may occur during the 100-year flood event. Contaminated runoff from manure and sludge storage piles must be retained on site.

(15) Any dairy AFO that is located in the major sole-source impairment zone, as defined under § 321.32 of this title (relating to Definitions), at a minimum must

provide for management and disposal of manure in accordance with § 321.42(i) of this title (relating to Requirements Applicable to the Major Sole-Source Impairment Zone).

(16) Nighttime application of liquid or solid manure shall be allowed only in areas with no occupied residence(s) within 1/4 mile from the outer boundary of the LMU receiving manure, sludge, or wastewater application. In areas with an occupied residence within 1/4 mile from the outer boundary of the LMU, 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.

(17) AFOs introducing wastewater or chemicals to water wellheads for the purpose of irrigation shall install backflow prevention devices in accordance with requirements contained in 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

(18) Composting on site at an AFO shall be performed in accordance with Chapter 332 of this title (relating to Composting). AFOs may compost manure generated on site, including manure, sludge, bedding, feed, and dead animals. In accordance with Chapter 332 of this title, an AFO operator may add agricultural products to provide an additional carbon source or bulking agent to aid in the composting process. If the compost areas are not roofed or covered with impermeable material, protected from external rainfall, or bermed to protect from runoff in the case of the design rainfall event, the compost areas shall be located within the drainage of the RCS. The runoff volume from compost areas shall be accounted for in the design of the RCS.

(19) Maintenance of animals.

(A) Animals confined at the AFO shall be restricted from coming into direct contact with surface water in the state through the use of fences or other controls.

(B) An AFO that maintains animals in pastures must maintain crops, vegetation, forage growth, or postharvest residues in the normal growing season, excluding the feed and water trough areas and designated open lots.

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