



University of Arkansas Division of Agriculture

An Agricultural Law Research Project

Nutrient Management Plans Statutes & Regulations

Texas

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Nutrient Management Plans

STATE OF TEXAS

- 1) **Tex. Water Code §§ 26.001 (10), (13), (14), (21), 26.011, .0136, .027; 30 TAC §§ 321.31, .32(2), (7), (14), (37), 321.36**
- 2) **Tex. Water Code §§ 26.301—.032; 30 TAC §§ 321.32(12), (21), 321.33(f)**
- 3) **Tex. Water Code §§ 26.001(10), (13), (14), (21), 26.011, .0136, .027; 30 TAC § 321.47(h)**

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 §§ 321.31, .32(2), (7), (14), (37), 321.36**

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.

§ 321.31. Manure, Litter, and Wastewater Discharge and Air Emission Limitations

(a) There shall be no discharge or disposal of manure, litter, or wastewater from an animal feeding operation (AFO) into or adjacent to waters in the state, except in accordance with an individual water quality permit issued by the commission, or a concentrated animal feeding operation (CAFO) general permit or other authorization issued or adopted by the commission. Manure, litter, and wastewater generated by an AFO under this subchapter shall be retained and utilized in an appropriate and beneficial

manner as provided by commission rules, orders, authorizations, CAFO general permits, or individual water quality permits.

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

§ 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.

[. . .]

(2) Animal feeding operation (AFO)--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 over any portion of the lot or facility. Two or more AFOs under common ownership are a single AFO if they adjoin each other, or if they use a common area or system for the beneficial use of manure, sludge, or wastewater. A land management unit is not part of an AFO.

[. . .]

(7) Best management practices (BMPs)--The schedule of activities, prohibitions of practices, maintenance procedures, and other management and conservation practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge, land application, or drainage from raw material storage.

[. . .]

(14) Concentrated animal feeding operation (CAFO)--Any animal feeding operation (AFO) defined as follows:

(A) Large CAFO--Any AFO that stables or confines and feeds or maintains for a total of 45 days or more in any 12-month period equal to or more than the numbers of animals specified in any of the following categories: (i) 1,000 cattle other than mature dairy cattle or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf

pairs; (ii) 1,000 veal calves; (iii) 700 mature dairy cattle (whether milkers or dry cows); (iv) 2,500 swine, each weighing 55 pounds or more; 10,000 swine, each weighing less than 55 pounds; (v) 500 horses; (vi) 10,000 sheep or lambs; (vii) 55,000 turkeys; (viii) 125,000 chickens (other than laying hens, if the operation does not use a liquid manure handling system); (ix) 30,000 laying hens or broilers (if the operation uses a liquid manure handling system), or 82,000 laying hens (if the operation does not use a liquid manure handling system); or (x) 5,000 ducks (if the operation uses a liquid manure handling system), or 30,000 ducks (if the operation does not use a liquid manure handling system).

(B) Medium CAFO--Any AFO that discharges pollutants into water in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into water in the state with the following number of animals: (i) 300 to 999 cattle other than mature dairy cattle or veal calves. Cattle includes, but is not limited to, heifers, steers, bulls, and cow/calf pairs; (ii) 200 to 699 mature dairy cattle (whether milking or dry cows); (iii) 300 to 999 veal calves; (iv) 750 to 2,499 swine each weighing 55 pounds or more, or 3,000 to 9,999 swine each weighing less than 55 pounds; (v) 150 to 499 horses; (vi) 3,000 to 9,999 sheep or lambs; (vii) 16,500 to 54,999 turkeys; (viii) 37,500 to 124,999 chickens (other than laying hens if the operation does not use a liquid manure handling system); (ix) 9,000 to 29,999 laying hens or broilers (if the operation uses a liquid manure handling system), or 25,000 to 81,999 laying hens (if the operation does not use a liquid manure handling system); or (x) 1,500 to 4,999 ducks (if the operation uses a liquid manure handling system), or 10,000 to 29,999 ducks (if the operation does not use a liquid manure handling system).

(C) Small CAFO--Any AFO that is designated by the executive director as a CAFO because it is a significant contributor of pollutants into or adjacent to water in the state and is not a large or medium CAFO.

(D) State-only CAFO--An AFO that falls within the range of animals in subparagraph (B) of this paragraph and that is located in the dairy outreach program areas or an AFO designated by the executive director as a CAFO because it is a significant contributor of pollutants into or adjacent to water in the state. A state-only CAFO is authorized under state law.

[. . .]

(37) Nutrient management plan (NMP)--A plan based on the Natural Resources Conservation Service Practice Standard Code 590, for Texas, to address the amount, rate, source, placement, method of application, and timing of the application of plant nutrients, and soil amendments.

[. . .]

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

(a) Applicability. These requirements apply to a concentrated animal feeding operation (CAFO) subject to the requirements of the Texas Pollutant Discharge Elimination System, unless otherwise noted.

(b) Permits. A CAFO shall comply with § 305.125 of this title (relating to Standard Permit Conditions) and all applicable permit conditions contained in commission rules. Requirements to provide for and ensure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in an individual water quality permit on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment.

(c) Nutrient management plan (NMP).

(1) The operator of a large CAFO shall develop and implement an NMP certified by a person or entity identified in § 321.32(10) of this title (relating to Definitions) to be in accordance with the Texas Natural Resources Conservation Service NRCS Practice Standard Code 590. The plan shall include site-specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in the manure, sludge, or wastewater. The NMP shall be updated annually. The operator shall determine the amount, in tons/acre or acre-inches/acre, of manure, sludge, and wastewater for each land management unit (LMU) using the following methodology:

(A) determine the phosphorus index rating using the Agronomy Technical Note No. 15 Phosphorus Assessment Tool of Texas;

(B) determine the maximum annual application rate using Appendix 5 of the NRCS Practice Standard Code 590 for Texas;

(C) determine the crop requirement or the crop removal rate, as appropriate, from the S Crops Table as contained in the Texas NRCS 590-Software Tool, site-specific historic CAFO yield data, or other sources as approved by the executive director; and

(D) account for: (i) the results of soil tests required by § 321.40(m)(1)(B) of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements); (ii) credits for all nitrogen in the soil that will be available for plant use; (iii) the amount of nitrogen and phosphorus in the manure and wastewater to be applied; (iv) consideration of multi-year phosphorus application (for any LMU where nutrients are

applied at a rate based on crop phosphorus requirement, the methodology must account for single-year nutrient applications that supply more than the crop's annual phosphorus requirement); and (v) all other additions of plant available nitrogen and phosphorus to the LMU (i.e., from sources other than manure or wastewater or credits for residual nitrogen).

(2) Terms of the NMP include the following:

(A) animal type and authorized head count;

(B) LMU and application acreage for each LMU;

(C) crops (including alternative crops) identified in the NMP with their yield goals for each LMU;

(D) the maximum application rates for nitrogen and phosphorus for each crop in each LMU;

(E) the methodology in paragraph (1) of this subsection (including formulas, sources of data, protocols for making determinations, etc.) and actual data used to calculate application rates; and

(F) any other factors necessary to determine the amounts of nitrogen and phosphorus to be applied.

(3) Changes to a NMP. Any changes, except changes resulting from annual recalculation, must be submitted to the executive director. The NMP will be reviewed by the executive director to determine if changes require revisions to the terms of the NMP. Revisions to terms of the NMP can be substantial or non-substantial.

(4) Substantial and non-substantial changes. Those changes that constitute a substantial change are defined in § 321.32(56) of this title. Non-substantial changes include, but are not limited to, changes to the site-specific LMU information in the Phosphorus index Worksheet, changes to the maximum application rate of nitrogen or phosphorus to be land applied or changes in the phosphorus index rating.

(5) If changes to the terms of the NMP are determined to be substantial, the changes must be incorporated into the permit in accordance with § 321.33(g) of this title (relating to Applicability and Required Authorizations).

(6) If changes to the terms of the NMP are determined to be non-substantial, the executive director will notify the permittee and include the revised permit in the permit record.

(7) The CAFO operator shall create, maintain for five years, and make available to the executive director, upon request, a copy of the site-specific NMP and records of manure and wastewater application.

(d) Compliance with the requirements of this section and applicable requirements of this subchapter constitute compliance with the provisions of 40 Code of Federal Regulations (CFR) § 122.42(e)(1)(i) - (ix).

(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.

(f) Soil sampling and testing procedures for dairy CAFOs, both state-only and Texas Pollutant Discharge Elimination System, located in a major sole-source impairment zone.

(1) Initial sampling. Before commencing land application of manure, sludge, or wastewater on an LMU, the operator shall collect and analyze at least one representative soil sample from each of the LMUs according to the following procedures. The CAFO operator is not required to collect soil samples or report on LMUs where manure, litter, or wastewater has not been applied during the preceding year. The CAFO operator must comply with the initial sampling requirement before resuming land application to such LMUs.

(2) Annual sampling. The TCEQ or its designee shall annually collect soil samples, according to the following procedures, for each LMU owned, operated, controlled, rented or leased by the CAFO operator where manure, litter, or wastewater was applied during the preceding year. The results of these analyses shall be used in determining the application rates for manure, sludge and wastewater.

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

(A) Samples shall be collected using approved procedures described in this section and the agency's publication, RG-408 entitled "Soil Sampling for Concentrated Animal Feeding Operations."

(B) Samples shall be collected by the Texas Commission on Environmental Quality or its designee and analyzed by a soil testing laboratory within the same 45-day time frame each year (from 45 days prior to until 45 days after the date of the previous year's sampling date), except when crop rotations or inclement weather require a change in the sampling time frame.

(C) One composite sample shall be obtained for each soil depth zone per uniform soil type (soils with the same characteristics and texture) within each LMU.

(D) Composite samples shall be comprised of 10 - 15 randomly sampled cores obtained from each of the following soil depth zones: (i) Zone 1: zero to six inches (for an LMU where the manure is incorporated directly into the soil) or zero to two inches (for an LMU where the manure is not incorporated into the soil). Wastewater is considered to be incorporated. If a zero to two-inch sample is required under this subsection, then an additional sample from the two to six-inch soil depth zone shall be obtained in accordance with the provisions of this section; and (ii) Zone 2: six to 24 inches.

(4) Laboratory analysis. Laboratory analysis of the soil samples shall be performed for physical and chemical parameters to include: nitrate as nitrogen in parts per million (ppm), extractable phosphorus (ppm, using Mehlich III with Inductively Coupled Plasma (ICP)), 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.

(g) Annual report required. An annual report shall be submitted to the executive director's Office of Compliance and Enforcement, Enforcement Division, by March 31 of each year (for the reporting period of January 1 to December 31 of the previous year, or the actual 12-month reporting period used by the CAFO) from each CAFO authorized under a CAFO general permit or through an individual water quality permit in accordance with this subchapter. The report shall be submitted on forms prescribed by the executive director and shall include, but is not limited to, the following information:

(1) number and type of animals, whether in open confinement or housed under roof;

(2) estimated total manure, sludge, and wastewater generated during the reporting period;

(3) total manure, sludge, and wastewater land applied during the reporting period;

(4) total manure, sludge, and wastewater transferred to other persons during the reporting period;

(5) total number of acres for land application under the control of the CAFO operator, including both the acres included in the NMP for the CAFO and the total number of acres used during the reporting period for land application;

- (6) summary of discharges of manure, sludge, or wastewater from the production area that occurred during the reporting period including dates, times, and approximate volume;
- (7) a statement indicating that the NMP under which the CAFO is operating was developed or revised and approved by a certified nutrient management specialist;
- (8) a copy of the initial soil analysis for each LMU, regardless of whether manure, sludge, or wastewater has been applied;
- (9) soil monitoring reports of all soil samples collected in accordance with the requirements of this subchapter;
- (10) groundwater monitoring reports if applicable;
- (11) the actual crop(s) planted and yield(s) for each LMU;
- (12) the actual nitrogen and phosphorus content of the manure, sludge, and process wastewater that was land applied;
- (13) the data used in calculations and the results of calculations conducted in accordance with subsection (c) of this section;
- (14) the amount of manure, sludge, and wastewater applied to each LMU during the reporting period;
- (15) any supplemental fertilizer applied during the reporting period; and
- (16) any other information requested by the executive director.

2) Tex. Water Code §§ 26.301—.032; 30 TAC §§ 321.32(12), (21), 321.33(f)

Sec. 26.301. Definitions.

In this subchapter:

- (1) “Poultry” means chickens or ducks being raised or kept on any premises in the state for profit.
- (2) “Poultry carcass” means the carcass, or part of a carcass, of poultry that died as a result of a cause other than intentional slaughter for use for human consumption.

(3) "Poultry facility" means a facility that:

(A) is used to raise, grow, feed, or otherwise produce poultry for commercial purposes; or

(B) is a commercial poultry hatchery that is used to produce chicks or ducklings.

(4) "Poultry litter" includes poultry excrement, bedding, and feed waste.

(5) "Liquid waste handling system" has the meaning assigned by Section 26.0286.

Sec. 26.302. Regulation of Poultry Facilities.

(a) A person who owns or operates a poultry facility shall ensure that the facility has adequate means or is adequately equipped to handle and dispose of poultry carcasses, poultry litter, and other poultry waste regardless of whether the person owns the poultry.

(b) A person who owns or operates a poultry facility shall implement and maintain a water quality management plan for the facility that is certified by the State Soil and Water Conservation Board under Section 201.026, Agriculture Code.

(b-1) The State Soil and Water Conservation Board may certify a water quality management plan for a poultry facility that:

(1) does not use a liquid waste handling system; and

(2) is required to obtain a permit or other authorization from the commission.

(b-2) The State Soil and Water Conservation Board in consultation with the Texas Commission on Environmental Quality by rule shall establish criteria to determine the geographic, seasonal, and agronomic factors that the board will consider to determine whether a persistent nuisance odor condition is likely to occur when assessing the siting and construction of new poultry facilities.

(b-3) The State Soil and Water Conservation Board may not certify a water quality management plan for a poultry facility located less than one-half of one mile from a business, off-site permanently inhabited residence, or place of worship if the presence of the facility is likely to create a persistent odor nuisance for such neighbors, unless the poultry facility provides an odor control plan the executive director determines is sufficient to control odors. This subsection does not apply to:

(1) a revision of a previously certified and existing water quality management plan unless the revision is necessary because of an increase in poultry production

of greater than 50 percent than the amount included in the existing certified water quality management plan for the facility; or

(2) any poultry facility located more than one-half of one mile from a surrounding business, permanently inhabited off-site residence, or place of worship established before the date of construction of the poultry facility.

(c) The commission may bring a cause of action to remedy or prevent a violation of this section.

(d) This section does not affect the authority of the commission to investigate or take enforcement action against an unauthorized discharge under Section 26.121.

§ 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.

[. . .]

(12) Certified water quality management plan--A site-specific plan for agricultural or silvicultural lands that includes appropriate land treatment practices, production practices, management measures, technologies, or combinations thereof that when implemented, will achieve a level of pollution prevention or abatement determined by the Texas State Soil and Water Conservation Board, in consultation with the local Soil and Water Conservation District, to be consistent with state water quality standards.

[. . .]

(21) Dry litter poultry operation--A poultry animal feeding operation that does not use a liquid manure handling system.

[. . .]

§ 321.33. Applicability and Required Authorizations

[. . .]

(f) Dry litter poultry operations. A dry litter poultry CAFO shall only be required to obtain authorization by an individual water quality permit or a CAFO general permit in accordance with subsection (a), (b), or (c) of this section if it proposes to discharge or the executive director determines that a permit is necessary due to an unauthorized discharge;

the operation's failure to comply with, or timely obtain, a certified water quality management plan approved by the Texas State Soil and Water Conservation Board; or other pertinent factors. Any dry litter poultry CAFO is authorized to be constructed and operated if the operation has a certified water quality management plan approved by the Texas State Soil and Water Conservation Board or is otherwise in compliance with the plan implementation schedule set forth in the notes following codified TWC, § 26.302.

[. . .]

3) Tex. Water Code §§ 26.001(10), (13), (14), (21), 26.011, .0136, .027; 30 TAC § 321.47(h)

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.

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

[. . .]

(h) Nutrient utilization plans (NUPs).

(1) Manure, sludge, or wastewater shall not be land applied to a LMU, unless the land application is implemented in accordance with a detailed NUP when results of the annual soil analysis for extractable phosphorus indicate:

(A) a level greater than 200 ppm; or

(B) a level greater than 350 ppm for an LMU where the average annual rainfall is 25 inches or less, 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 commission to do so in order to protect water in the state.

(2) An NMP, based on crop removal, certified in accordance with NRCS Practice Standard Code 590 complies with the requirements of a complete and effective NUP.

(3) A NUP, based on crop removal, shall be developed by an employee of the NRCS, a nutrient management specialist certified by the NRCS, the TSSWCB, Texas AgriLife Extension Service, an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas, or a professional agronomist or soil scientist certified by the American Registry of Certified Professionals in Agronomy, Crops and Soils, after approval by the executive director based on a determination by the executive director that another person or entity identified in this paragraph cannot develop the plan in a timely manner. No land application under an approved NUP shall cause or contribute to a violation of water quality standards or create a nuisance.

(4) Land application under the terms of the NUP may begin as soon as the plan is developed in accordance with this subsection. After a NUP has been implemented, the operator shall land apply in accordance with the NUP until soil phosphorus is reduced below 200 ppm. Thereafter, the AFO operator shall apply manure, litter, or wastewater at agronomic rates according to the requirements of this section.

[. . .]