

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: May 25, 2016

DATE OF REQUEST: May 6, 2016

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Derek Baxter, (512) 239-2613

CAPTION: Docket No. 2016-0292-RUL. Consideration for publication of, and hearing on, proposed amended Section 7.102 of 30 TAC Chapter 7, Memoranda of Understanding.

The proposed Memoranda of Understanding (MOU) rulemaking is a coordination between the Texas Commission on Environmental Quality and the Texas State Soil and Water Conservation Board that adopts by reference updates and procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the Letter of Agreement into the MOU.
(Kerry Niemann, Robert Brush) (Rule Project No. 2016-020-007-OW)

L'Oreal Stepney, P.E.
Deputy Director

Kelly Holligan
Division Director

Derek Baxter
Agenda Coordinator

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners

Date: May 6, 2016

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2016-0292-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 7, Memoranda of Understanding
MOU Between the Texas State Soil and Water Conservation Board and
TCEQ
Rule Project No. 2016-020-007-OW

Background and reason(s) for the rulemaking:

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB) and Texas Commission on Environmental Quality (TCEQ) (30 Texas Administrative Code (TAC) §7.102) became effective on June 9, 1997. A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. Both agencies agreed to coordinate rulemaking to update the MOU.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

This rulemaking proposes to repeal the current MOU in 30 TAC §7.102 and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Representatives from the Water Quality Planning Division, Environmental Law Division, Office of Compliance and Enforcement Program Support Section, and Water Quality Division coordinated reviews and comments with the TSSWCB, and developed the MOU with the following changes:

- The TCEQ's statutory name was updated throughout the MOU.
- The TSSWCB's jurisdictional responsibility was updated throughout the MOU for consistency with the Texas Agriculture Code. The MOU states that the TSSWCB is the lead agency in the state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution.

Re: Docket No. 2016-0292-RUL

- Provisions related to Federal Clean Water Act, §319(h) grant program for nonpoint source pollution were updated to accurately express how this program is currently awarded and administered. The TSSWCB and TCEQ are independently and directly awarded equal halves of this program and both agencies independently coordinate and administer the preparation of work projects under the grant. TCEQ is responsible for implementing the Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.
- The MOU establishes that the TCEQ is responsible for the enforcement of all laws and regulations related to water and air quality, including both point and nonpoint sources, regardless of whether or not a facility has an approved WQMP.
- The MOU establishes that the TSSWCB is the lead agency and has primary responsibility for complaint investigations and compliance inspections on AFOs not required to obtain a water quality permit and on dry litter poultry concentrated animal feeding operations (CAFOs). The TSSWCB will investigate first odor complaints, where none have been received within the previous 12 months, at any dry litter poultry CAFO. Subsequent odor complaints at the same facility will be conducted by TCEQ.
- The MOU establishes that the TCEQ will respond to the second and all subsequent odor complaints for a rolling 12-month period at any dry litter poultry CAFO within 18 hours of complaint notification.
- The MOU requires both agencies to coordinate and cooperate with each other to establish protocols on activities related to complaint, inspection, and enforcement of non-permitted AFOs and dry litter poultry CAFOs.
- The MOU requires operations referred to the TCEQ by the TSSWCB be resolved prior to the TCEQ referring the operation back to the TSSWCB for WQMP development or investigation. A letter will serve as formal correspondence documenting the resolution of enforcement compliance issues.
- The MOU requires interagency meetings with regional office staff to be conducted on an annual basis to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.
- The MOU requires the TSSWCB to provide TCEQ documentation of compliance inspection activities at dry litter poultry CAFOs on a quarterly basis.
- The MOU establishes that the TSSWCB can refer violations at AFOs and dry litter poultry CAFOs to TCEQ without decertifying the facility's WQMP.

B.) Scope required by federal regulations or state statutes:

No state statutes or federal regulations require revisions to this MOU.

C.) Additional staff recommendations that are not required by federal rule or state statute:

The proposed updated MOU reorganizes and streamlines current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and incorporates applicable conditions of the LOA into the MOU.

Re: Docket No. 2016-0292-RUL

Statutory authority:

- Texas Water Code, §5.103 and §5.104(b)
- Texas Agriculture Code, §201.026

Effect on the:

The MOU does not create a group of affected persons who were not affected previously. There is no fiscal impact.

A.) Regulated community:

The MOU affects the enforcement of laws and regulations related to water and air quality, including both point and nonpoint sources; typically the complaint, inspection, and enforcement of non-permitted AFOs and dry litter poultry operation CAFOs.

B.) Public:

The MOU does not directly affect the public.

C.) Agency programs:

The MOU affects the following agency programs:

- Water Quality Planning Division
 - NPS Team – implementation of the NPS Management Program
- Office of Compliance and Enforcement Program Support Section
 - Field Support Team – complaint response and coordination of air and water regional operation activities
- Water Quality Division
 - CAFO Permitting Team – review and approval of dry litter poultry facility odor control plans

Stakeholder meetings:

There were no stakeholder meetings held related to this rulemaking; however, a rule public hearing will be held during the comment period in Austin.

Potential controversial concerns and legislative interest:

The TSSWCB initiated rulemaking for 31 TAC §523.5 on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5(b), specifically adopting the MOU. The next step requires that the TCEQ go through the rulemaking process to revise 30 TAC §7.102 to adopt by reference the MOU found in 31 TAC §523.5(b).

Commissioners

Page 4

May 6, 2016

Re: Docket No. 2016-0292-RUL

Will this rulemaking affect any current policies or require development of new policies?

This rulemaking proposes to repeal the current MOU in 30 TAC §7.102 and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5. The rulemaking does not affect any current policies or require development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If this rule does not go forward the current MOU in 30 TAC §7.102 will remain in effect and will not reflect the revised MOU in 31 TAC §523.5. Therefore, 30 TAC §7.102 must be repealed and replaced with a statement that adopts the revised MOU in 31 TAC §523.5 by reference.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: May 25, 2016

Anticipated *Texas Register* publication date: June 10, 2016

Anticipated public hearing date: July 12, 2016

Anticipated public comment period: June 10, 2016 - July 15, 2016

Anticipated adoption date: October 19, 2016

Agency contacts:

Kerry Niemann, Rule Project Manager, Water Quality Planning Division, (512) 239-0483

Bob Brush, Staff Attorney, (512) 239-5600

Derek Baxter, Texas Register Coordinator, (512) 239-2613

Attachments

31TAC §523.5(b)

Letter of Agreement between the TSSWCB and TCEQ for the Dry Litter Poultry Operations and Animal Feeding Operations

cc: Chief Clerk, 2 copies
Executive Director's Office
Marshall Coover
Erin Chancellor
Stephen Tatum
Jim Rizk
Office of General Counsel
Kerry Niemann
Derek Baxter

of such landowners. The LOA [landowner's authorization] form shall have attached a list of participating landowner names, ranch names, addresses, [and] acreage, and a georeferenced map (a map image incorporating a system of geographic ground coordinates, such as latitude/longitude or UTM coordinates) showing the exact boundaries of each property for each participating landowner. The LOA [landowner's authorization] may be signed by one authorized agent who represents the group of landowners or an association.

(d) The landowner or the landowner's agent shall ensure that information included in the LOA is true and correct prior to executing an authorization.

§65.161. Reports.

(a) The holder of an AMP [a permit] shall file with the department within 30 days following the end of each calendar quarter or on termination of the AMP [permit], whichever occurs first, a daily flight log and report, on a form prescribed by the department, showing:

(1) name, signature (or electronic affirmation of consent), and AMP [permit] number of the AMP [permit] holder;

(2) number and description of the wildlife or exotic animals managed under the AMP [permit];

(3) the LOA [landowner's authorization] control number issued by the department;

(4) the dates of authorized flights taken;

(5) the time of day an authorized flight is completed;

(6) type of management by use of aircraft performed;

(7) the name [and signature] of pilot(s); and

(8) the name, address, and hunting license or government-issued identification number of the gunner(s).

(b) Information required on the daily flight log and report shall be entered daily immediately upon completion of an authorized flight. Stopping to refuel does not constitute completion of a flight.

(c) The holder of an AMP [a permit] shall be required to file with the department a negative daily flight log and report, if there are no management flights for the calendar quarter.

(d) The reports required by this section shall be filed electronically.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2015.

TRD-201505322

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 17, 2016

For further information, please call: (512) 389-4775



31 TAC §§65.156 - 65.159

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Parks and Wildlife Department or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed under Parks and Wildlife Code, §43.109, which provides the commission with authority to make regulations governing the management of wildlife or exotic animals by the use of aircraft under this subchapter, including forms and procedures for permit applications; procedures for the management of wildlife or exotic animals by the use of aircraft; limitations on the time and the place for which a permit is valid; establishment of prohibited acts; rules to require, limit, or prohibit any activity as necessary to implement Parks and Wildlife Code, Chapter 43, Subchapter G.

The repeals affect Parks and Wildlife Code, Chapter 43, Subchapter G.

§65.156. Amendment of Permit.

§65.157. Renewal of Permit.

§65.158. Permit Not Transferable.

§65.159. Permit Fee.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 7, 2015.

TRD-201505321

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Earliest possible date of adoption: January 17, 2016

For further information, please call: (512) 389-4775



PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.5

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to §523.5, Agricultural and Silvicultural Water Quality Management, and adds new §523.5(b), concerning the agency's administration of agricultural and silvicultural water quality and the agency's interaction and coordination with Texas Commission on Environmental Quality (TCEQ) in the form of a Memorandum of Understanding as a rule.

Section 523.5(a) is being amended to show it will become a subsection (a) rather than being an implied (a). The language of subsection (a) will continue to state the Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

A new subsection (b) is being added to state it is the Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

New §523.5(b)(1) will state this rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

New subsection (b)(1)(A) will state Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

New subsection (b)(1)(B) will state Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

New subsection (b)(1)(C) will state Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

New subsection (b)(1)(D) will state Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

New subsection (b)(1)(E) will state Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

New subsection (b)(1)(F) will state Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

New subsection (b)(1)(G) will state Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly administer the development and implementation of the Texas Nonpoint Source Management Program; and

New subsection (b)(1)(H) will state Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

New subsection (b)(1)(I) will state Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

New subsection (b)(1)(J) will state Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and

New subsection (b)(1)(K) will begin the Memorandum of Agreement by stating Now, the Parties, agree as follows:

New subsection (b)(2) is a statement that introduces a list of items the (TCEQ) Commission agrees to carry out.

New subsection (b)(2)(A) states TCEQ will coordinate and administer the preparation of grant work projects for the Federal

Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

New subsection (b)(2)(B) states TCEQ will execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

New subsection (b)(2)(C) states TCEQ will implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

New subsection (b)(2)(D) states TCEQ will develop and maintain state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

New subsection (b)(2)(E) states TCEQ will coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

New subsection (b)(2)(F) states that TCEQ will provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

New subsection (b)(2)(G) states TCEQ will refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (2)(I).

New subsection (b)(2)(H) states TCEQ will retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

New subsection (b)(2)(I) states TCEQ will pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with sections (5) and (6).

New subsection (b)(2)(J) states TCEQ will ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

New subsection (b)(3) is a statement that introduces a list of items the TSSWCB agrees to carry out.

New subsection (b)(3)(A) states the TSSWCB will coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from agricultural and silvicultural sources.

New subsection (b)(3)(B) states the TSSWCB will execute cooperative agreements and associated amendments; and grant

awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

New subsection (b)(3)(C) states the TSSWCB will implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

New subsection (b)(3)(D) states the TSSWCB will provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

New subsection (b)(3)(E) states the TSSWCB will develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

New subsection (b)(3)(F) states the TSSWCB will provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

New subsection (b)(3)(G) states the TSSWCB will process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

New subsection (b)(3)(H) states the TSSWCB will schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

New subsection (b)(3)(I) states the TSSWCB will develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

New subsection (b)(3)(J) states the TSSWCB will provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

New subsection (b)(3)(K) states the TSSWCB will investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (a)(9).

New subsection (b)(3)(L) states the TSSWCB will refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the violation.

New subsection (b)(4) is a statement that introduces a list of items that both the (TCEQ) Commission and the State Board agree to carry out.

New subsection (b)(4)(A) states that both will maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

New subsection (b)(4)(B) states that both will communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

New subsection (b)(4)(C) states that both will provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

New subsection (b)(4)(D) states that both will meet annually to review and discuss the state's nonpoint source water quality program and to refine agency coordination mechanisms.

New subsection (b)(4)(E) states that will work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

New subsection (b)(4)(F) states that both will comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

New subsection (b)(4)(G) states that both will cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

New subsection (b)(4)(H) states that both will coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

New subsection (b)(4)(I) states that both will coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

New subsection (b)(4)(J) states that both will cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

New subsection (b)(4)(K) states that both will conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

New subsection (b)(5) states the coordination on Dry Litter Poultry CAFOs:

New subsection (b)(5)(A) states the Board is the lead agency and has primary responsibility for complaint investigations and compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

New subsection (b)(5)(B) states the Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide

documentation of such activities to the Commission on a quarterly basis.

New subsection (b)(5)(C) states that for any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

New subsection (b)(5)(D) states that the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

New subsection (b)(5)(E) states the Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

New subsection (b)(5)(E)(i) lists that if it is a failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

New subsection (b)(5)(E)(ii) lists that if it is an unauthorized discharge(s) into or adjacent to surface water in the State; or

New subsection (b)(5)(E)(iii) lists that if it is a failure to notify Commission of any discharge; or

New subsection (b)(5)(E)(iv) lists that if it is a failure to maintain water quality buffers; or

New subsection (b)(5)(E)(v) list that if it is a failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

New subsection (b)(5)(E)(vi) lists that if it is a failure to completely implement mortality management practices required by the WQMP; or

New subsection (b)(5)(E)(vii) lists that if it is operating a commercial poultry operation without the required WQMP; or

New subsection (b)(5)(E)(viii) lists that if it is a documented nuisance odor violation; or

New subsection (b)(5)(E)(ix) lists that if it is a chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

New subsection (b)(5)(F) states that the Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

New subsection (b)(6) is about the coordination on AFOs:

New subsection (b)(6)(A) states that the Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

New subsection (b)(6)(B) states that the Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has

been received by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

New subsection (b)(6)(C) states that the Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B of this title (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(9). Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

New subsection (b)(6)(D) states that the Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

New subsection (b)(6)(E) states that the Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45-days of notification of the investigation outcome or does not implement appropriate corrective action.

New subsection (b)(6)(F) states that when the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90-days of signing a request for planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

New subsection (b)(6)(G) states that the Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

New subsection (b)(6)(H) states that the Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pollutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

New subsection (b)(6)(I) states that the Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

New subsection (b)(7) begins the General conditions:

New subsection (b)(7)(A) establishes the term of MOU. The term of this MOU shall be from the effective date until termination.

New subsection (b)(7)(B) establishes the notice of Termination. Either party may terminate this MOU upon 90 days written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

New subsection (b)(7)(C) establishes the cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

New subsection (b)(7)(D) establishes nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

New subsection (b)(7)(E) addresses any other notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: (Insert Name of Appropriate Individual), P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: (Insert Name of Appropriate Individual), P.O. Box 658, Temple, TX 76503-0658.

New subsection (b)(7)(F) establishes the Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.

New subsection (b)(7)(F) ends with a line showing Adopted (insert date) and Effective (insert date) dates that will be inserted when the Memorandum of Understanding is approved by both the State Board and TCEQ.

Mr. Kenny Zajicek, Fiscal Officer, State Board has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering this amended rule.

Mr. Zajicek has also determined that for the first five year period this amended rule is in effect, the public benefit anticipated as a result of administering this rule will be better coordination between the State Board and TCEQ and an overall improvement in the state's water quality.

There are no anticipated costs to small businesses or individuals resulting from this amended rule.

Comments on the proposed amendment may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, by e-mail to risom@tsswcb.texas.gov, or by facsimile at (254) 773-3311.

The amendment is proposed under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by this amendment.

§523.5. *Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality.*

(a) The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(b) Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

(1) This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(A) Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

(B) Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

(C) Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

(D) Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

(E) Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(F) Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

(G) Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly administer the development and implementation of the Texas Nonpoint Source Management Program; and

(H) Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

(I) Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

(J) Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and

(K) Now, the Parties, agree as follows:

(2) The Commission agrees to:

(A) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

(B) Execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(C) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

(D) Develop and maintain state guidance for all non-point source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

(E) Coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

(F) Provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(G) Refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (2)(I).

(H) Retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

(I) Pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with sections (5) and (6).

(J) Ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

(3) The Board agrees to:

(A) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from agricultural and silvicultural sources.

(B) Execute cooperative agreements and associated amendments; and grant awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(C) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

(D) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

(E) Develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

(F) Provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

(G) Process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

(H) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

(I) Develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

(J) Provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

(K) Investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (a)(9).

(L) Refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the violation.

(4) Both parties agree to:

(A) Maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

(B) Communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

(C) Provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(D) Meet annually to review and discuss the state's non-point source water quality program and to refine agency coordination mechanisms.

(E) Work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

(F) Comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

(G) Cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

(H) Coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

(I) Coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

(J) Cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

(K) Conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

(5) Coordination on Dry Litter Poultry CAFOs:

(A) The Board is the lead agency and has primary responsibility for complaint investigations and compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

(B) The Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide documentation of such activities to the Commission on a quarterly basis.

(C) For any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

(D) The Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

(E) The Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

(i) failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

(ii) unauthorized discharge(s) into or adjacent to surface water in the State; or

(iii) failure to notify Commission of any discharge;
or

(iv) failure to maintain water quality buffers; or

(v) failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

(vi) failure to completely implement mortality management practices required by the WQMP; or

(vii) operating a commercial poultry operation without the required WQMP; or

(viii) a documented nuisance odor violation; or

(ix) chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

(F) The Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

(6) Coordination on AFOs:

(A) The Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

(B) The Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has been received by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

(C) The Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B of this title (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(9). Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

(D) The Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

(E) The Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45-days of notification of the investigation outcome or does not implement appropriate corrective action.

(F) When the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90-days of signing a request for

planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

(G) The Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

(H) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pollutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

(I) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

(7) General conditions:

(A) Term of MOU. The term of this MOU shall be from the effective date until termination.

(B) Notice of Termination. Either party may terminate this MOU upon 90 day written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

(C) Cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

(D) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as

amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(E) Notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(F) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies. Adopted (insert date) Effective (insert date)

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on December 4, 2015.

TRD-201505281

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Earliest possible date of adoption: January 17, 2016

For further information, please call: (254) 773-2250 x252



prohibits the release of a breeder deer onto a Class III release site unless the deer is tagged, prior to leaving the originating facility, by attaching a button-type RFID or NUES tag approved by the department to one ear. A Level 3 DMP facility is the highest risk DMP facility. Similarly, deer within a Class III release site are at a higher risk for CWD. Therefore, the department believes that breeder deer introduced into a Level 3 DMP facility or released onto a Class III site should be readily identifiable for purposes of subsequent CWD testing. Therefore, the proposed new rule requires such deer to be ear-tagged prior to release.

The department received three comments opposing adoption of the proposed rule. All three commenters provided a reason or rationale for opposing adoption. The comments, accompanied by the department's response to each, follow.

One commenter opposed adoption and stated that deer breeding should be prohibited. The department neither agrees nor disagrees with the comment and responds that the comment is not germane because the rule does not regulate deer breeders. To the extent that the commenter is referring to the relationship between deer breeding and DMP activities, the department disagrees and responds that deer breeding and DMP activities are both authorized by the Texas Parks and Wildlife Code. No changes were made as a result of the comment.

One commenter opposed adoption and stated opposition to deer ranching/farming. The department neither agrees nor disagrees with the comment and responds that the comment is not germane because the rule does not regulate deer breeders. To the extent that the commenter is referring to DMP activities, the department disagrees and responds that DMP activities are authorized by the Texas Parks and Wildlife Code. No changes were made as a result of the comment.

One commenter opposed adoption and stated that as a Class II release site owner, "the restrictions are detrimental," because they cause property values to decline and prevent the commenter from selling deer hunts profitably. The department neither agrees nor disagrees with the comment and responds that the comment is not germane because the rule does not regulate release sites other than those areas to which deer are released from a DMP pen. To the extent the commenter is referring to the release of deer following DMP activities, the department disagrees with the comment and responds that since a deer infected with CWD may not display symptoms of the disease for several years, the ability of the department to identify facilities directly impacted (i.e., facilities that received deer from the index facility, referred to as "Tier 1 facilities") does not eliminate the need to test deer at release sites that receive deer from a DMP facility that had received deer from a TC 2 breeding facility. A release site is designated as a Class II release site on the basis of increased risk of containing exposed deer, specifically, by receiving deer from a TC 2 breeding facility (under the interim CWD breeder rules) or from a Level 2 DMP facility under the rule as adopted. Under the rule as adopted, a DMP facility becomes a Level 2 DMP facility if it receives deer from a TC 2 breeding facility. TC 2 breeding facilities do not have a testing history that provides sufficient confidence that CWD does not exist in those facilities; therefore, testing of hunter harvested deer on Class II release sites is necessary in order to establish additional confidence that CWD was not introduced from a TC 2 deer breeding or Level 2 DMP facility.

The department received two comments supporting adoption of the rule as proposed.

No groups or associations commented on the proposed rule.

The new rule is adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure, and Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1), and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600464

Ann Bright

General Counsel

Texas Parks and Wildlife Department

Effective date: February 21, 2016

Proposal publication date: December 18, 2015

For further information, please call: (512) 389-4775



PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 523. AGRICULTURAL AND SILVICULTURAL WATER QUALITY MANAGEMENT

31 TAC §523.5

The Texas State Soil and Water Conservation Board (State Board) adopts amendments to §523.5, Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality. The amendments are adopted with changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). New §523.5(b) concerns the agency's interaction and coordination with Texas Commission on Environmental Quality (TCEQ) in the form of a Memorandum of Understanding (MOU) as a rule. New §523.5(b) outlines the agency's administration of agricultural and silvicultural water quality and the agency's interaction and coordination with the Texas Commission on Environmental Quality (TCEQ) in the form of an MOU.

Section 523.5(a) is amended to show it will become a subsection (a) rather than being an implied (a). The language of subsection (a) continues to state the Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

A new subsection (b) was added to §523.5 to state it is the Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

New subsection 523.5(b)(1) states this rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

New subsection (b)(1)(A) states Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

New subsection (b)(1)(B) states Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

New subsection (b)(1)(C) states Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

New subsection (b)(1)(D) states Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

New subsection (b)(1)(E) states Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

New subsection (b)(1)(F) states Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

New subsection (b)(1)(G) states Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly administer the development and implementation of the Texas Nonpoint Source Management Program; and

New subsection (b)(1)(H) states Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

New subsection (b)(1)(I) states Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

New subsection (b)(1)(J) states Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and

New subsection (b)(2) will begin the Memorandum of Agreement by stating Now, the Parties, agree as follows:

New subsection (b)(2)(A) is a statement that introduces a list of items the (TCEQ) Commission agrees to carry out.

New subsection (b)(2)(A)(i) states TCEQ will coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

New subsection (b)(2)(A)(ii) states TCEQ will execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

New subsection (b)(2)(A)(iii) states TCEQ will implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

New subsection (b)(2)(A)(iv) states TCEQ will develop and maintain state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

New subsection (b)(2)(A)(v) states TCEQ will coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

New subsection (b)(2)(A)(vi) states that TCEQ will provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

New subsection (b)(2)(A)(vii) states TCEQ will refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(2)(A)(ix).

New subsection (b)(2)(A)(viii) states TCEQ will retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

New subsection (b)(2)(A)(ix) states TCEQ will pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with subsection (b)(3) and (4).

New subsection (b)(2)(A)(x) states TCEQ will ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

New subsection (b)(2)(B) is a statement that introduces a list of items the TSSWCB agrees to carry out.

New subsection (b)(2)(B)(i) states the TSSWCB will coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily tar-

get nonpoint source pollution from agricultural and silvicultural sources.

New subsection (b)(2)(B)(ii) states the TSSWCB will execute cooperative agreements and associated amendments; and grant awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

New subsection (b)(2)(B)(iii) states the TSSWCB will implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

New subsection (b)(2)(B)(iv) states the TSSWCB will provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

New subsection (b)(2)(B)(v) states the TSSWCB will develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

New subsection (b)(2)(B)(vi) states the TSSWCB will provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

New subsection (b)(2)(B)(vii) states the TSSWCB will process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

New subsection (b)(2)(B)(viii) states the TSSWCB will schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

New subsection (b)(2)(B)(ix) states the TSSWCB will develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

New subsection (b)(2)(B)(x) states the TSSWCB will provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

New subsection (b)(2)(B)(xi) states the TSSWCB will investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(1)(l).

New subsection (b)(2)(B)(xii) states the TSSWCB will refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard

copies of all photographs, correspondence, records, and other documents relating to the violation.

New subsection (b)(2)(C) is a statement that introduces a list of items that both the (TCEQ) Commission and the State Board agree to carry out.

New subsection (b)(2)(C)(i) states that both will maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

New subsection (b)(2)(C)(ii) states that both will communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

New subsection (b)(2)(C)(iii) states that both will provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

New subsection (b)(2)(C)(iv) states that both will meet annually to review and discuss the state's nonpoint source water quality program and to refine agency coordination mechanisms.

New subsection (b)(2)(C)(v) states that both will work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

New subsection (b)(2)(C)(vi) states that both will comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

New subsection (b)(2)(C)(vii) states that both will cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

New subsection (b)(2)(C)(viii) states that both will coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

New subsection (b)(2)(C)(ix) states that both will coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

New subsection (b)(2)(C)(x) states that both will cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

New subsection (b)(2)(C)(xi) states that both will conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

New subsection (b)(3) states the coordination on Dry Litter Poultry CAFOs:

New subsection (b)(3)(A) states the Board is the lead agency and has primary responsibility for complaint investigations and

compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

New subsection (b)(3)(B) states the Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide documentation of such activities to the Commission on a quarterly basis.

New subsection (b)(3)(C) states that for any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

New subsection (b)(3)(D) states that the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

New subsection (b)(3)(E) states the Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

New subsection (b)(3)(E)(i) lists that if it is a failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

New subsection (b)(3)(E)(ii) lists that if it is an unauthorized discharge(s) into or adjacent to surface water in the State; or

New subsection (b)(3)(E)(iii) lists that if it is a failure to notify Commission of any discharge; or

New subsection (b)(3)(E)(iv) lists that if it is a failure to maintain water quality buffers; or

New subsection (b)(3)(E)(v) list that if it is a failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

New subsection (b)(3)(E)(vi) lists that if it is a failure to completely implement mortality management practices required by the WQMP; or

New subsection (b)(3)(E)(vii) lists that if it is operating a commercial poultry operation without the required WQMP; or

New subsection (b)(3)(E)(viii) lists that if it is a documented nuisance odor violation; or

New subsection (b)(3)(E)(ix) lists that if it is a chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

New subsection (b)(3)(F) states that the Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

New subsection (b)(4) is about the coordination on AFOs:

New subsection (b)(4)(A) states that the Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not

designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

New subsection (b)(4)(B) states that the Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has been received by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

New subsection (b)(4)(C) states that the Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to subsection (b)(1)(I). Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

New subsection (b)(4)(D) states that the Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

New subsection (b)(4)(E) states that the Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45 days of notification of the investigation outcome or does not implement appropriate corrective action.

New subsection (b)(4)(F) states that when the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90 days of signing a request for planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

New subsection (b)(4)(G) states that the Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

New subsection (b)(4)(H) states that the Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pollutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

New subsection (b)(4)(I) states that the Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Com-

mission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

New subsection (b)(5) begins the General conditions:

New subsection (b)(5)(A) establishes the term of MOU. The term of this MOU shall be from the effective date until termination.

New subsection (b)(5)(B) establishes the notice of Termination. Either party may terminate this MOU upon 90 day written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

New subsection (b)(5)(C) establishes the cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

New subsection (b)(5)(D) establishes nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

New subsection (b)(5)(E) addresses any other notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: (Insert Name of Appropriate Individual), P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: (Insert Name of Appropriate Individual), P.O. Box 658, Temple, TX 76503-0658.

New subsection (b)(5)(F) establishes the Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.

New subsection (b)(5)(F) ends with a line showing Adopted (insert date) and Effective (insert date) dates that will be inserted when the Memorandum of Understanding is approved by both the State Board and TCEQ.

No comments were received regarding the adoption of these amendments.

The amendments are adopted under the Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

§523.5. *Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality.*

(a) The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(b) Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

(1) This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(A) Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

(B) Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

(C) Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

(D) Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

(E) Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(F) Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

(G) Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly administer the development and implementation of the Texas Nonpoint Source Management Program; and

(H) Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

(I) Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

(J) Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; therefore

(2) Now the Parties agree as follows:

(A) The Commission agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

(ii) Execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work

projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Develop and maintain state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

(v) Coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

(vi) Provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(vii) Refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to clause (ix) of this subparagraph.

(viii) Retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

(ix) Pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with paragraphs (4) and (5) of this subsection.

(x) Ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

(B) The Board agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from agricultural and silvicultural sources.

(ii) Execute cooperative agreements and associated amendments; and grant awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

(v) Develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

(vi) Provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

(vii) Process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

(viii) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

(ix) Develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

(x) Provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

(xi) Investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection.

(xii) Refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the violation.

(C) Both parties agree to:

(i) Maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

(ii) Communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

(iii) Provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(iv) Meet annually to review and discuss the state's nonpoint source water quality program and to refine agency coordination mechanisms.

(v) Work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

(vi) Comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

(vii) Cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

(viii) Coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

(ix) Coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

(x) Cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

(xi) Conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

(3) Coordination on Dry Litter Poultry CAFOs:

(A) The Board is the lead agency and has primary responsibility for complaint investigations and compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

(B) The Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide documentation of such activities to the Commission on a quarterly basis.

(C) For any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

(D) The Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

(E) The Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

(i) failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

(ii) unauthorized discharge(s) into or adjacent to surface water in the State; or

(iii) failure to notify Commission of any discharge; or

(iv) failure to maintain water quality buffers; or

(v) failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

(vi) failure to completely implement mortality management practices required by the WQMP; or

(vii) operating a commercial poultry operation without the required WQMP; or

(viii) a documented nuisance odor violation; or

(ix) chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

(F) The Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

(4) Coordination on AFOs:

(A) The Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

(B) The Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has been received by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

(C) The Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection. Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

(D) The Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

(E) The Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45 days of notification of the investigation outcome or does not implement appropriate corrective action.

(F) When the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90 days of signing a request for planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

(G) The Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

(H) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pol-

lutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

(I) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

(5) General conditions:

(A) Term of MOU. The term of this MOU shall be from the effective date until termination.

(B) Notice of Termination. Either party may terminate this MOU upon 90-day written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

(C) Cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

(D) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(E) Notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(F) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies. Adopted [insert date] Effective [insert date]

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 3, 2016.

TRD-201600546

Mel Davis

Special Projects Coordinator

Texas State Soil and Water Conservation Board

Effective date: February 23, 2016

Proposal publication date: December 18, 2015

For further information, please call: (254) 773-2250 x252



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER A. GENERAL RULES

34 TAC §3.2

The Comptroller of Public Accounts adopts amendments to §3.2, concerning offsets and application of credits and payments to liabilities; unjust enrichment, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9604). This amendment memorializes long-standing policy of the comptroller regarding offsets for oil and gas severance tax.

Subsection (b)(2)(G)(i) has been removed to correctly reflect the comptroller policy allowing offsets for oil and gas severance tax. Subsequent clauses are renumbered to reflect the removal of the oil and gas severance tax category.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The section implements Tax Code, §111.104 (Refunds).

The agency certifies that legal counsel has reviewed the adoption and found it to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on February 1, 2016.

TRD-201600466

Don Neal

Chief Deputy General Counsel

Comptroller of Public Accounts

Effective date: February 21, 2016

Proposal publication date: December 25, 2015

For further information, please call: (512) 475-0387



CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER M. LOCAL GOVERNMENT RELIEF FOR DISABLED VETERANS EXEMPTION

34 TAC §§9.4321, 9.4323, 9.4325, 9.4327

The Comptroller of Public Accounts adopts new Chapter 9, Subchapter M, Local Government Relief for Disabled Veterans Exemption, §§9.4321, 9.4323, 9.4325, and 9.4327. New §9.4323 is adopted with changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9606). The other rules are adopted without changes. The comptroller has revised §9.4323(c) (Application) from the initial proposed text to make a nonsubstantive grammatical change.

§523.5. MEMORANDUM OF UNDERSTANDING BETWEEN THE TEXAS STATE SOIL AND WATER CONSERVATION BOARD AND THE TEXAS COMMISSION ON ENVIRONMENTAL QUALITY.

(a) The Texas State Soil and Water Conservation Board may enter into and maintain a Memorandum of Understanding with the Texas Commission on Environmental Quality which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(b) Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality.

(1) This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality, which sets forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.

(A) Whereas, the Texas State Soil and Water Conservation Board (the Board) is the lead agency in this state for planning, management, and abatement of agricultural and silvicultural nonpoint source pollution; and

(B) Whereas, the Board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on all matters relating to the planning, management, and abatement of agricultural and silvicultural nonpoint source pollution abatement; and

(C) Whereas, for purposes of this MOU, the Board is responsible for nonpoint source pollution abatement and prevention activities on all agricultural and silvicultural land as required by Texas Water Code §26.1311; and

(D) Whereas, the Board has established and implemented a water quality management plan (WQMP) certification program, in accordance with Texas Agriculture Code §201.026(g) for agricultural and silvicultural lands; and

(E) Whereas, the Texas Commission on Environmental Quality (the Commission) is the state agency with primary responsibility for implementing the constitution and laws of the State related to the quality of water and air; and

(F) Whereas, the Commission shall coordinate all its activities related to this MOU with the Board; and

(G) Whereas, consistent with the intent of Federal Clean Water Act §319, the Board and the Commission are committed to coordinate and jointly

administer the development and implementation of the Texas Nonpoint Source Management Program; and

(H) Whereas the Board and the Commission are independently and directly awarded equal halves of the annual Federal Clean Water Act §319 grant program for nonpoint source pollution by the EPA, both agencies independently coordinate and administer the preparation of work projects under the grant; and

(I) Whereas, for the purpose of this MOU, the Commission is responsible for the enforcement of all laws of the State related to water and air quality including point source and nonpoint source pollution regulations, including agricultural and silvicultural lands; and

(J) Whereas, consistent with Texas law and public policy, the Board and Commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; therefore

(2) Now the Parties agree as follows:

(A) The Commission agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from sources other than agriculture and silviculture.

(ii) Execute cooperative agreements, associated amendments, grant awards, and contracts related to grant work projects coordinated and administered by the Commission. For those grant work projects, the Commission is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for non-agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Develop and maintain state guidance for all nonpoint source pollution abatement projects other than agricultural or silvicultural nonpoint source pollution projects as described by this MOU.

(v) Coordinate with the Board those compliance and enforcement actions dealing with agricultural and silvicultural pollution.

(vi) Provide to the Board all current forms, timetables, procedural rules, and any policy documents of the Commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.

(vii) Refer to the Board complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to clause (ix) of this subparagraph.

(viii) Retain the responsibility for pursuing any enforcement action related to a violation of state environmental laws and regulations, inclusive of rules, orders, and nonpoint source pollution regulations (including those applied to agricultural and silvicultural lands).

(ix) Pursue appropriate enforcement action in accordance with Commission rules against any person referred in accordance with paragraphs (4) and (5) of this subsection.

(x) Ensure that any operation that was previously referred to the Commission by the Board for environmental non-compliance and subsequent decertification of a WQMP has resolved any Commission enforcement issues prior to referring the operation to the Board for WQMP development or investigation. Any such

referral shall be accompanied by a letter to the Board stating the operation has resolved its Commission regulated environmental compliance issues.

(B) The Board agrees to:

(i) Coordinate and administer the preparation of grant work projects for the Federal Clean Water Act §319 grant program that primarily target nonpoint source pollution from agricultural and silvicultural sources.

(ii) Execute cooperative agreements and associated amendments; and grant awards and contracts relating to grant work projects coordinated and administered by the Board. For those grant work projects, the Board is independently responsible for monitoring, implementation, and providing EPA with the required financial and programmatic reporting information.

(iii) Implement the provisions of the EPA approved Texas Nonpoint Source Management Program for agricultural/silvicultural surface and ground water nonpoint source pollution.

(iv) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the Board by the Federal Clean Water Act §319. Reports will be submitted in accordance with EPA requirements.

(v) Develop and maintain state guidance for agricultural or silvicultural nonpoint source pollution as described by this MOU and 31 TAC §523.1.

(vi) Provide to the Commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the Texas Nonpoint Source Management Program.

(vii) Process citizen complaints related to agricultural and silvicultural nonpoint source pollution in a manner that is consistent with the practices and standards of the Commission.

(viii) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural nonpoint source pollution project activities as negotiated with EPA.

(ix) Develop and maintain a current electronic database to track and document all WQMPs. Data recorded for each WQMP will include, but is not limited to, the name of the WQMP applicant(s), the facility address or location, date of the WQMP application request, the type of operation covered by each WQMP, and the approval date of each WQMP.

(x) Provide the Commission with documentation Board rules, policies, guidance, etc. concerning the development, supervision, and monitoring of individual certified WQMPs.

(xi) Investigate complaints concerning violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection.

(xii) Refer to the Commission violations of a WQMP or violations of laws or rules relating to agricultural or silvicultural nonpoint source pollution under the jurisdiction of the Board, where the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the violation.

(C) Both parties agree to:

(i) Maintain each party's existing level of effort required by the EPA for the implementation of Federal Clean Water Act §319 projects.

(ii) Communicate and coordinate directly with each other and the EPA on matters relating to project planning and implementation of nonpoint source pollution projects funded by Federal Clean Water Act §319.

(iii) Provide required reports to the EPA on nonpoint source pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.

(iv) Meet annually to review and discuss the state's nonpoint source water quality program and to refine agency coordination mechanisms.

(v) Work together to develop and implement water quality management programs that satisfy State water quality standards as established by the Commission.

(vi) Comply with all relevant state and federal rules and regulations; and grant conditions, including financial audits, data quality assurance, quality control, and progress reports.

(vii) Cooperate on activities related to the implementation of the "Texas State Management Plan for Prevention of Pesticide Contamination of Groundwater."

(viii) Coordinate on inspection and enforcement activities relating to animal feeding operations (AFOs) authorized under 30 TAC §321.47 or a WQMP certified by the Board in accordance with Texas Agriculture Code §201.026(g) for the protection of water quality in the State.

(ix) Coordinate on inspection and enforcement activities for the protection of water quality in the State relating to dry litter poultry concentrated animal feeding operations (CAFOs) authorized under 30 TAC Chapter 321 and a Board certified WQMP.

(x) Cooperate to establish protocols for the coordination of activities related to complaint response, compliance inspections, and enforcement of AFOs and CAFOs operating under a Board certified WQMP.

(xi) Conduct interagency meetings annually with regional office staff of both agencies to review and update the AFO and dry litter poultry CAFO complaint/referral process and to refine agency coordination procedures.

(3) Coordination on Dry Litter Poultry CAFOs:

(A) The Board is the lead agency and has primary responsibility for complaint investigations and compliance inspections to determine if a dry litter poultry CAFO meets the requirements of a Board certified WQMP and CAFO regulations.

(B) The Board shall perform a number of dry litter poultry CAFO compliance inspections to be negotiated annually with the Commission. The Board will provide documentation of such activities to the Commission on a quarterly basis.

(C) For any dry litter poultry CAFO operating under a Board certified WQMP, the Board shall investigate in a timely manner all water quality complaints and the first odor complaint where none has been received by either the Commission or the Board within the previous twelve (12) months.

(D) The Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry CAFO operating under a Board certified WQMP.

(E) The Board shall refer to the Commission for possible enforcement action violations at dry litter poultry CAFOs regardless of WQMP certification status if it involves:

(i) failure to obtain authorization under an individual or general permit if evidence of a discharge is observed; or

(ii) unauthorized discharge(s) into or adjacent to surface water in the State; or

(iii) failure to notify Commission of any discharge; or

(iv) failure to maintain water quality buffers; or

(v) failure to completely implement nutrient management practices required by CAFO rules and the WQMP; or

(vi) failure to completely implement mortality management practices required by the WQMP; or

(vii) operating a commercial poultry operation without the required WQMP; or

(viii) a documented nuisance odor violation; or

(ix) chronic violations for failure to implement WQMP practices required to meet CAFO rules under 30 TAC Chapter 321, Subchapter B.

(F) The Board shall perform follow-up compliance inspections at dry litter poultry CAFOs found out of compliance with their WQMP to verify that the operation has returned to compliance with the Board-certified WQMP and CAFO regulations.

(4) Coordination on AFOs:

(A) The Board is the lead agency and has primary responsibility for agricultural or silvicultural nonpoint source pollution abatement resulting from all AFOs, as defined under 30 TAC Chapter 321, Subchapter B (relating to concentrated animal feeding operations) that are not designated as CAFOs or otherwise required to operate under a water quality permit issued by the Commission.

(B) The Board shall investigate water quality complaints and monitor compliance of all AFOs regardless of their participation in the WQMP Program. The Board shall also investigate the first odor complaint, where none has been received

by the Commission or the Board within the previous twelve (12) months, at any dry litter poultry AFO operating under a Board-certified WQMP.

(C) The Commission, upon receiving a general water quality complaint regarding an AFO, will determine if the AFO is required to obtain authorization pursuant to 30 TAC Chapter 321, Subchapter B (relating to Control of Certain Activities by Rule). If the determination by the Commission indicates the facility does not meet the definition of a CAFO or otherwise require a water quality permit, the complaint and any written documentation will be referred to the Board, except for any person referred to the Commission for enforcement action pursuant to paragraph (1)(I) of this subsection. Additionally, the Commission shall investigate within eighteen (18) hours the second and all subsequent odor complaints for a rolling twelve (12) month period at any dry litter poultry AFO.

(D) The Board, upon receiving a general complaint regarding an AFO, will investigate to determine whether such a facility will need to obtain authorization from the Commission or initiate corrective actions to avoid impacts to aquatic life or human health. Those facilities that are determined to require authorization from the Commission pursuant to 30 TAC Chapter 321, Subchapter B (relating Control of Certain Activities by Rule) will be referred to the Commission in writing within five working days from the date of the investigation.

(E) The Board shall refer an AFO to the Commission for possible enforcement action, if the complaint investigation determines that the potential for a water quality violation exists at a facility and the facility owner or operator does not submit a request for a Board certified WQMP to resolve the complaint within 45 days of notification of the investigation outcome or does not implement appropriate corrective action.

(F) When the owner or operator of an AFO fails to sign a WQMP that was developed to resolve a complaint involving a potential water quality violation within 90 days of signing a request for planning assistance, the Board shall refer the AFO to the Commission for possible enforcement action.

(G) The Board shall refer to the Commission for possible enforcement any AFO complaint received where there is evidence of a discharge.

(H) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any investigation and documentation by the Board of a complaint related to an AFO where there is a documented violation that causes a discharge of pollutants to the air, water, or land that causes serious impact to the environment; or affects human health and safety.

(I) The Board shall refer to the Commission for possible enforcement action, regardless of WQMP status, any violation related to an AFO that the Board has determined that the necessary corrective action has not been taken. The Board, upon referral, shall provide the Commission documentation, including but not limited to, any original documents or Board certified copies of the original documents; and hard copies of all photographs, correspondence, records, and other documents relating to the complaint or violation.

(5) General conditions:

(A) Term of MOU. The term of this MOU shall be from the effective date until termination.

(B) Notice of Termination. Either party may terminate this MOU upon 90-day written notice to the other party. Only upon written concurrence of the other agency can this MOU be modified.

(C) Cooperation of Parties. It is the intention of the Board and the Commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.

(D) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.

(E) Notices. Any notices required by this MOU shall be in writing and addressed to the respective agency as follows: Texas Commission on Environmental Quality, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.

(F) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies. Adopted [insert date] Effective [insert date]

Jerry D. Nichols , *Chairman*
Reed Stewart, *Vice Chairman*
José Dodier, Jr., *Member*
Barry Mahler, *Member*



Aubrey Russell, *Member*
Joe Ward, *Member*
Larry Jacobs, *Member*
Rex Isom, *Executive Director*

TEXAS STATE SOIL & WATER CONSERVATION BOARD
Protecting and Enhancing Natural Resources for Tomorrow

August 24, 2007

Mr. Glenn Shankle
Executive Director
Texas Commission on Environmental Quality
P.O. Box 13087
Austin, Texas 78711-3087

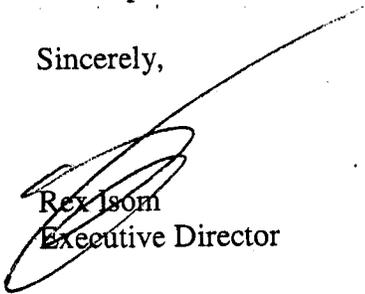
Re: TSSWCB and TCEQ Letter of Agreement for the Dry Litter Poultry Operations and Animal Feeding Operations

Dear Mr. Shankle:

The TSSWCB concurs that the enclosed Letter of Agreement (LOA), now signed and effective, should be used as guidance for the TSSWCB and TCEQ on dry litter poultry operations and animal feeding operations until our Memorandum of Understanding (30 TAC 7.102 & 31 TAC 523.5) is amended to reflect the current CAFO rules and our agreement regarding the handling of odor issues. Our staff is currently in the process of developing a first draft for an amended Memorandum of Understanding, and will provide that draft to your staff soon.

If you or your staff ever have any questions relating to TSSWCB's processes or procedures for implementing the provisions of the LOA, please contact Mr. John Foster at (254) 773-2250, ext. 235. As always, thank you for your continued cooperation in our partnership to control nonpoint source pollution in Texas.

Sincerely,


Rex Isom
Executive Director

Enclosure

RECEIVED

AUG 28 2007

TCEQ
FIELD OPERATIONS

cc: Mark Vickery, Deputy Executive Director, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087

Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality Supplemental Letter of Agreement to Memorandum of Understanding found in 30 TAC § 7.102 for Dry Litter Poultry Operations and Animal Feeding Operations (AFOs)

Inspections on Dry Litter Poultry CAFOs

The majority of dry litter poultry facilities have certified water quality management plans (CWQMPs) from the TSSWCB which meet the requirements of the Pollution Prevention Plan in accordance with Title 30 Texas Administrative Code (30 TAC) § 321.46(a)(5). At this time, the TSSWCB conducts about 200 annual audits of these facilities. As discussed, the TCEQ proposes that the TSSWCB assume compliance monitoring responsibilities over all dry litter poultry Concentrated Animal Feeding Operations (CAFOs) with CWQMPs. If any problems are encountered with the grower and the compliance issues are not resolved, current procedure requires the TSSWCB to refer the grower to the TCEQ for possible enforcement action once the TSSWCB removes certification of the WQMP. The TCEQ proposes to amend this procedure to allow the TSSWCB to refer growers without removing certification of the plan.

Problems requiring referral to the TCEQ for enforcement consideration include:

1. Failure to obtain coverage under a general permit if evidence of a discharge or discharges is observed;
2. An unauthorized discharge or discharges into or adjacent to surface water in the state;
3. Failure to notify TCEQ of any discharge;
4. Failure to maintain required water quality buffers;
5. Failure to completely implement nutrient management practices required by CAFO rules and the CWQMP; and
6. Failure to completely implement mortality management practices documented in the CWQMP.

Complaint Protocol On AFOs with a CWQMP and Dry Litter Poultry CAFOs

Water Quality Complaints on dry litter poultry CAFOs with a CWQMP and AFOs with a CWQMP:

1. The TSSWCB will be the first responder at AFOs and CAFOs with a CWQMP.
 - a. If evidence of a discharge is observed or a nuisance odor violation is documented, the operation will be referred to TCEQ for possible enforcement action in accordance with our MOU.
 - b. If no evidence of a discharge is observed or no nuisance odor violation is documented, but other CWQMP deficiencies exist, the TSSWCB will resolve the complaint or refer the operation to TCEQ for possible enforcement action in accordance with the MOU.
 - c. TCEQ may take enforcement action at an operation without referral from TSSWCB for violations of the Texas Water Code or 30 TAC, Chapter 321; Subchapter B.

2. The TCEQ will be the first responder on all other CAFOs and AFOs. In cases where the TCEQ receives a complaint, but the complainant does not identify the name of the operation, TCEQ staff will ask the complainant for the farm information/location and contact the TSSWCB regional office for a determination of CWQMP status.
 - a. If the site does not have a CWQMP, the TCEQ would handle the complaint. If any discharge or nuisance odor violation is documented by the TCEQ, the operation will be subject to enforcement action.
 - b. If the site has a CWQMP and no violations of the Texas Water Code or 30 TAC, Chapter 321, Subchapter B is documented, the TCEQ will refer the matter to the TSSWCB.

Odor Complaints on dry litter poultry CAFOs with a CWQMP and AFOs with a CWQMP:

1. For dry litter poultry (CAFOs/AFOs) with a CWQMP, the TSSWCB will be the first responder. If a nuisance odor condition exists, the TSSWCB will resolve the complaint or refer the operation to TCEQ for possible enforcement action in accordance with the MOU. If evidence of a discharge or discharges is observed, when responding to a poultry odor complaint, the operation will be referred to TCEQ for possible enforcement action in accordance with the MOU. However, TCEQ may take enforcement action at an operation without referral from TSSWCB for violations of the Texas Water Code or 30 TAC, Chapter 321, Subchapter B.
2. For all other CAFOs and AFOs, the TCEQ will be the first responder. If a discharge or nuisance odor violation is documented, the operation will be subject to enforcement action.



Glenn Shankle, Executive Director
Texas Commission on Environmental Quality

8-2-07

Date



Rex Isom, Executive Director
Texas State Soil & Water Conservation Board

8/8/07

Date

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §7.102.

Background and Summary of the Factual Basis for the Proposed Rule

The Memorandum of Understanding (MOU) between the Texas State Soil and Water Conservation Board (TSSWCB or Board) and TCEQ became effective on June 9, 1997 (See §7.102). A Letter of Agreement (LOA) regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on animal feeding operations (AFOs) with a certified water quality management plan (WQMP) and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, procedural mechanisms for point and nonpoint source pollution programs, and to incorporate applicable conditions of the LOA into the MOU. To update the MOU, the TSSWCB initiated rulemaking for 31 TAC §523.5 on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9099). During the TSSWCB comment period no comments were received. On January 21, 2016, the TSSWCB adopted the amendment to 31 TAC §523.5 (Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality), specifically adopting the MOU and making the rule effective (41 TexReg 1253). This rulemaking proposes to repeal the current MOU in §7.102 and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Section Discussion

The proposed amendment to §7.102 changes the agency's name from the "Texas Natural Resource Conservation Commission" to the "Texas Commission on Environmental Quality" and adopts by reference the MOU adopted by the TSSWCB in 31 TAC §523.5.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rule is not subject to Texas Government Code, §2001.0225 because it does not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The specific intent of the proposed rule is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The original MOU between the agencies became effective June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007.

Changes to the MOU are also necessary to incorporate applicable conditions of the LOA into the MOU. The proposed amendment would replace the LOA.

The proposed rule does not meet the definition of a major environmental rule because the proposed rule only explains existing agency responsibilities rather than creates substantive requirements to protect the environment. The intent of the rule is merely to clarify and explain jurisdiction of the respective agencies. Because the intent of the rule does not create or require actions for the purpose of protecting the environment or reducing risks to human health from environmental exposure, the proposed rule is not an environmental rule. Additionally, the proposed rule does not meet the definition of a major environmental rule because it is not anticipated that the proposed rule will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the proposed rule merely explicates jurisdiction of the respective agencies and does not impose new requirements. Finally, the proposed rule action does not meet any of the four applicability requirements for a major environmental rule listed in Texas Government Code, §2001.0225(a). Therefore, the commission concludes that the proposed rule does not meet the definition of a major environmental rule. The commission invites comment on the Draft Regulatory Impact Determination. Comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rulemaking and performed an assessment of whether the proposed rule constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to update the MOU between the TSSWCB and the TCEQ to reflect the TCEQ's current statutory name and the TSSWCB and TCEQ's current procedures for coordinating the jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs. The proposed rulemaking would substantially advance this stated purpose by providing one reference point interpreting the jurisdiction of the respective agencies. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of public or private real property because the proposed rule does not affect real property. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. The proposed rule merely clarifies and explains jurisdiction of the respective agencies. Therefore, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rule is in effect, no fiscal implications are anticipated

for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

The proposed rule would implement an MOU between the TSSWCB and TCEQ. The original MOU became effective on June 9, 1997. An LOA regarding inspections of dry poultry litter operations and complaint protocol for water quality complaints on AFOs with a certified WQMP and dry poultry litter operations became effective on August 24, 2007. Changes to the MOU are necessary to incorporate applicable conditions of the LOA into the MOU and to update the MOU to reflect TCEQ's current statutory name as well as the TSSWCB and TCEQ's current procedures for coordinating jurisdictional authority, program responsibilities, and procedural mechanisms for point and nonpoint source pollution programs.

The TSSWCB initiated rulemaking to update the MOU on November 19, 2015, and published for comment the proposal in the December 18, 2015, issue of the *Texas Register*. During the TSSWCB comment period, no comments were received. On January 21, 2016, the TSSWCB adopted the amendment, specifically adopting the MOU and making the rule effective. This rulemaking proposes to repeal the current MOU in §7.102 and replace it with an adoption by reference of the full text of the revised MOU at 31 TAC §523.5.

Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution

programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for the agency or any other unit of state or local government.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the changes seen in the proposed rule will be updated rule for the coordination between the TSSWCB and TCEQ and continued safeguarding of the state's water quality.

The proposed rules is not anticipated to result in fiscal implications for businesses or individuals. Incorporating existing procedures for coordinating the jurisdictional authority, program responsibilities, and the procedural mechanisms for point and nonpoint source pollution programs through the repeal of the current MOU and adopting by reference the full text of the revised MOU, is not expected to have any fiscal impact for any business or individual.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation or administration of the proposed rule for the first five-year period the proposed rule is in effect. The proposed rule imposes no new requirements or regulations on small or micro-businesses and imposes no new costs.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rule is in effect and is intended to enhance the public health, safety, environmental, and economic welfare of the state.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

Public Comment

Written comments may be submitted to Derek Baxter, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at:

<http://www1.tceq.texas.gov/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2016-020-007-OW. The comment period closes July 15, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at

http://www.tceq.texas.gov/rules/propose_adopt.html. For further information, please contact Kerry Niemann, Planning & Implementation Section, (512) 239-0483.

§7.102

Statutory Authority

The amendment is proposed under Texas Water Code (TWC), §5.104, concerning Memoranda of Understanding (MOUs), which authorizes the commission to enter into MOUs and adopt them as rules with other state agencies. Additionally, the amendment is proposed under TWC, §5.103 concerning Rules and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC and other laws of the state.

The proposed amendment implements 31 TAC §523.5.

§7.102. Adoption of Memoranda of Understanding between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission.

[(a)] The regulations of this section adopt by reference 31 TAC §5.235 (relating to Memorandum of Understanding between the Texas State Soil and Water Conservation Board and the Texas Commission on Environmental Quality) as adopted and published in the February 19 2016, issue of the *Texas Register* (41 TexReg 1253). [This rule contains the memorandum of understanding ("MOU") between the Texas State Soil and Water Conservation Board and the Texas Natural Resource Conservation Commission, which sets

forth the coordination of jurisdictional authority, program responsibility, and procedural mechanisms for point and nonpoint source pollution programs.]

[(1) Whereas, the Texas State Soil and Water Conservation Board, here within called the Board, is the state agency with the primary responsibility for activities relating to agricultural and silvicultural nonpoint source (NPS) pollution abatement; and]

[(2) Whereas, the board shall represent the State before the United States Environmental Protection Agency (EPA), or other federal agencies on matters relating to agricultural and silvicultural nonpoint source pollution abatement; and]

[(3) Whereas, for purposes of this MOU, the board is responsible for NPS pollution abatement activities on all agricultural and silvicultural land as defined by Senate Bill (SB) 503, Texas 73rd State Legislature; and]

[(4) Whereas, the board has established and implemented a water quality management plan certification program, in accordance with SB 503 of the Texas 73rd State Legislature for agricultural and silvicultural lands; and]

[(5) Whereas, the Texas Natural Resource Conservation Commission here within known as the commission, is the state agency with primary responsibility for

implementing the constitution and laws of the State related to the quality of water and air;
and]

[(6) Whereas, the commission has been designated as the lead agency for the Federal Clean Water Act, §319 program administered by the EPA; and]

[(7) Whereas, the commission shall coordinate all its activities related to this MOU with the board; and]

[(8) Whereas, consistent with the intent of Federal Clean Water Act, §319, the board and the commission are committed to the development and implementation of a coordinated NPS pollution program for the State; and]

[(9) Whereas, for the purpose of this MOU, the commission is responsible for the enforcement of all point source and NPS pollution regulations, including that on agricultural and silvicultural lands; and]

[(10) Whereas, consistent with Texas law and public policy, the board and commission mutually desire to protect and maintain a high quality environment and the health of the people of the State; and]

[(11) Now, therefore, in consideration of the following promises, covenants, conditions, and the mutual benefits to accrue to the parties of this MOU, the Parties, desiring to cooperate in function and service agree as follows:]

[(b) The Texas Natural Resource Conservation Commission agrees to:]

[(1) Administer, for the State, the Federal Clean Water Act, §319 grant program for NPS pollution. The commission will be responsible for coordinating the preparation of grant work programs.]

[(2) Execute cooperative agreements and associated amendments, and grant awards and contracts. The commission will be responsible for monitoring implementation of work programs and providing EPA with necessary financial and programmatic reporting information for non-agricultural/silvicultural surface and ground water work program elements.]

[(3) Implement the provisions of the EPA-approved Federal Clean Water Act, §319 management programs for non-agricultural/silvicultural surface and ground water NPS pollution.]

[(4) Complete, under current administrative procedures, all projects and programs for which grant funds have been awarded, under Federal Clean Water Act, §319.

All future projects and programs implementing the EPA-approved Federal Clean Water Act, §319 management program for agricultural/silvicultural NPS pollution, and supported by §319 federal grants, will be administered by the board via a separate grant with EPA.]

[(5) Develop and maintain state guidance for all NPS pollution abatement projects other than agricultural or silvicultural NPS pollution projects as described by this MOU and SB 503.]

[(6) Coordinate with the board those compliance and enforcement actions relative to agricultural and silvicultural pollution.]

[(7) Provide to the board all current forms, timetables, procedural rules and any policy documents of the commission for addressing and processing citizen complaints related to agricultural and silvicultural pollution.]

[(8) Provide the board with access to the commission's electronic database for all current agricultural waste management plans.]

[(9) Investigate and/or monitor compliance of all animal feeding operations (AFO), as defined under Chapter 321, Subchapter K of this title (relating to Concentrated Animal Feeding Operations), other than those covered by subsection (c)(12) of this section.]

[(10) In response to a general complaint, investigate a facility to determine whether a permit or written authorization under Chapter 321 of this title (relating to Control of Certain Activities by Rule) is required of the facility. If problems are documented or conditions exist which have the potential to adversely impact the environment, the facility owner or operator will have the option of being referred to the board for the purpose of obtaining a certified water quality management plan or obtaining authorization under Chapter 321 of this title from the commission. If the owner or operator of a facility requests referral to the board in order to obtain a certified water quality management plan, the commission will send the board all pertinent documentation within five working days of the investigation.]

[(11) Retain the responsibility for pursuing any enforcement action related to a violation of a commission rule or order which occurred prior to the facility operator/owner obtaining a certified water quality management plan.]

[(12) Pursue appropriate enforcement action in accordance with commission rules against any person referred in accordance with subsection (c)(10) of this section.]

[(c) The Texas State Soil and Water Conservation Board agrees to:]

[(1) Serve as the recipient of grants from EPA for agricultural and silvicultural NPS pollution projects as described in this MOU and SB 503 and funded through Federal Clean Water Act, §319.]

[(2) Coordinate directly with the EPA on matters relating to programmatic and financial issues of agricultural and silvicultural projects funded by the board through separate grants from EPA under Federal Clean Water Act, §319. Notify the commission in writing on any decision made that results in a change in the programmatic or financial status of a project.]

[(3) Provide the EPA with required reports for all agricultural/silvicultural projects funded through the board by the Federal Clean Water Act, §319. Reports will be submitted in accordance with EPA requirements.]

[(4) Develop and maintain state guidance for agricultural or silvicultural NPS pollution as described by this MOU and SB 503.]

[(5) Provide to the commission information about agricultural and silvicultural activities required for the annual evaluation of the state's implementation of the NPS Management Plan.]

[(6) Process citizen complaints related to agricultural and silvicultural NPS pollution in a manner that is consistent with the practices and standards of the commission.]

[(7) Schedule and conduct management meetings with the EPA to review the status of agricultural and silvicultural NPS pollution project/program activities as negotiated with EPA.]

[(8) Develop and maintain a current electronic database to track and document the proceedings of all water quality management plans and corrective action plans. Data recorded will include, but not be limited to, the identification of applicant(s), date of application for each plan, and approval date of each plan.]

[(9) Provide the commission with access to the board's electronic database for all water quality management plans. Software and equipment necessary to facilitate electronic transfer of data should be compatible with that of the commission.]

[(10) Refer to the commission for possible enforcement action any complaint or violation related to a certified water quality management plan for an AFO, a law or rule relating to agricultural or silvicultural nonpoint source pollution for which the board has determined that the necessary corrective action has not been taken. The board, upon referral, shall provide the commission documentation, including but not limited to, any

original documents or "certified copies" of the original documents and hard copies of all photographs, sample analyses, correspondence, records and other documents relating to the complaint.]

[(11) Provide the commission with documentation (board rules, policies, guidance, etc.) for development, supervision, and monitoring of individual certified water quality management plans.]

[(12) Investigate complaints and monitor compliance of all AFOs operating under a certified water quality management plan or any facility covered by law or board rule relating to agricultural or silvicultural nonpoint source pollution.]

[(13) Investigate any complaint received by the board to determine whether such a facility will need to obtain authorization from the commission. Those facilities which are determined to require authorization from the commission under Chapter 321 of this title (relating to Control of Certain Activities by Rule) will be referred to the commission within five working days from the date of investigation. If it is determined that the potential for a water quality violation exists at a facility that does not need authorization under Chapter 321 of this title, and the facility owner/operator does not implement a corrective action plan or does not file an application for a certified water quality management plan to resolve the complaint within 45 days of notification of the

investigation outcome, the board shall automatically refer the facility to the commission for possible enforcement action, written authorization, or a permit.]

[(14) Refer to the Commission for possible enforcement action, complaints which were initially resolved by an agreement to develop a site specific certified water quality management plan for the involved facility and for which the facility owner/operator has not signed such a plan within 90 days of the date their request for planning assistance was approved by the Soil and Water Conservation District.]

[(15) Refer to the Commission for possible enforcement any complaint received for which there has been an immediate impact to aquatic life. Any investigation by the Board of a complaint related to an AFO holding a certified water quality management plan and for which a violation is documented that causes a situation in which exposure of contaminants to the air, water or land is affecting human health and safety, or will cause serious impact to the environment unless immediate actions are taken, shall be automatically referred to the Commission for possible enforcement action.]

[(d) Both parties agree to:]

[(1) Work together to refine the existing process for screening and prioritization of project proposals to be funded under Federal Clean Water Act, §319.]

[(2) Coordinate efforts in the development and submission of an annual work program to EPA for Federal Clean Water Act, §319, funding.]

[(3) Maintain each party's existing level of effort required by the EPA for the implementation of §319 programs/projects.]

[(4) Communicate and coordinate directly with each other and the EPA on matters relating to program/project planning and implementation of NPS pollution activities/projects funded by Federal Clean Water Act, §319.]

[(5) Provide required reports to the EPA on NPS pollution project activities. Reports will include status of project implementation, summary of information/education activities, monitoring activities, and other outputs satisfactory to EPA.]

[(6) Meet semi-annually to review and discuss the state's NPS water quality program and to refine agency coordination mechanisms.]

[(7) Work together to develop criteria for the development of water quality management programs that satisfy the state water quality standards as established by the Commission.]

[(8) Comply with all relevant state and federal statutes and procedures, and grant conditions, including financial audits, data quality assurance and quality control, and progress reports.]

[(9) Cooperate on activities related to the implementation of the "Texas State Management Plan for Agricultural Chemicals in Ground Water."]

[(e) General conditions:]

[(1) Term of MOU. The term of this MOU shall be from the effective date until termination.]

[(2) Notice of Termination. Any party may terminate this MOU upon a 90 day written notice to the other party. Both parties agree to fulfill any grant commitments in place at the time of termination. Only upon written concurrence of the other agency can this MOU be modified.]

[(3) Cooperation of Parties. It is the intention of the board and the commission that the details of providing the services in support of this MOU shall be worked out, in good faith, by both agencies.]

[(4) Nondiscrimination. Activities conducted under this MOU will be in compliance with the nondiscrimination provisions as contained in Titles VI and VII of the Civil Rights Act of 1964, as amended, the Civil Rights Restoration Act of 1987, and other nondiscrimination statutes, namely Section 504 of the Rehabilitation Act of 1973, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, and the Americans With Disabilities Act of 1992, which provide that no person in the United States shall, on the grounds of race, color, national origin, age, sex, religion, marital status, or handicap be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity receiving federal financial assistance.]

[(5) Notices. Any notices required by this MOU to be in writing shall be addressed to the respective agency as follows: Texas Natural Resource Conservation Commission, Attn: _____, P.O. Box 13087, Austin, TX 78711-3087 and to the Texas State Soil and Water Conservation Board, Attn: _____, P.O. Box 658, Temple, TX 76503-0658.]

[(6) Effective Date of MOU. This MOU is effective upon execution by both agencies. By signing this MOU, the signatories acknowledge that they are acting under proper authority from their governing bodies.]