

DOCKET NUMBER 2007-1496-AGR

APPLICATION BY JEWEL ALT §
AND ONENE KEUNING, dba O-KEE §
DAIRY FOR PERMIT NO. §
WQ0004108000 §

BEFORE THE
TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

EXECUTIVE DIRECTOR'S RESPONSE TO HEARING REQUEST

I. Introduction

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Hearing Request on the application by Jewel Alt and Onene Keuning dba O-Kee Dairy (Applicant) for a major amendment of its existing Concentrated Animal Feeding Operation (CAFO) Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0004108000. The City of Waco submitted a contested case hearing (CCH) request.

Attached for Commission consideration are the following:

- Attachment A - Satellite Map of Area
- Attachment B - Fact Sheet and ED's Preliminary Decision
- Attachment C - Draft Permit
- Attachment D - Executive Director's Response to Public Comments (RTC)
- Attachment E - Compliance History

CHIEF CLERKS OFFICE

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TEXAS
COMMISSION
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QUALITY

Copies of the documents were provided to all parties. The Office of the Chief Clerk previously mailed the RTC to all persons on the mailing list.

II. Description Of The Facility

The Applicant is seeking a major amendment that would allow the dairy to increase its head from 690 to 999 total cows. The dairy consists of two retention control structures (RCSs) and six land management units (LMUs). The facility is located at 4745 County Road 207, Hico, Texas in Hamilton County, Texas. The facility is located in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin.

III. Procedural Background

The permit application was received on January 24, 2006 and declared administratively complete on September 14, 2006. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in the *Hamilton Herald-News* on September 28, 2006. TCEQ staff completed a technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision for a Water Quality Permit was published in the *Hamilton Herald-News* on

January 4, 2007. A public meeting on the permit application was held on April 19, 2007 and the comment period ended at the conclusion of the meeting. The ED's Response to Comment was filed on August 9, 2007. This application is subject to House Bill 801, 76th Legislature, 1999.

IV. The Evaluation Process for Hearing Requests

House Bill 801 established statutory procedures for public participation in certain environmental permitting proceedings. For those applications declared administratively complete on or after September 1, 1999, it established new procedures for providing public notice and public comment, and for the commission's consideration of hearing requests. The application was declared administratively complete on September 14, 2006 and therefore is subject to the HB 801 requirements. The Commission implemented HB 801 by adopting procedural rules in 30 Texas Administrative Code (30 TAC) Chapters 39, 50, and 55.

A. Responses to Requests

"The executive director, the public interest counsel, and the applicant may submit written responses to [hearing] requests . . ." 30 TAC § 55.209(d).

According to 30 TAC § 55.209(e), responses to hearing requests must specifically address:

- (1) whether the requestor is an affected person;
- (2) which issues raised in the hearing request are disputed;
- (3) whether the dispute involves questions of fact or of law;
- (4) whether the issues were raised during the public comment period;
- (5) whether the hearing request is based on issues raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment;
- (6) whether the issues are relevant and material to the decision on the application; and
- (7) a maximum expected duration for the contested case hearing.

B. Hearing Request Requirements

In order for the Commission to consider a hearing request, the Commission must first determine whether the request meets certain requirements. As noted in 30 TAC § 55.201(c): "A request for a contested case hearing by an affected person must be in writing, must be filed with the chief clerk within the time provided . . . and may not be based on an issue that was raised solely in a public comment withdrawn by the commenter in writing by filing a withdrawal letter with the chief clerk prior to the filing of the Executive Director's Response to Comment."

According to 30 TAC § 55.201(d), a hearing request must substantially comply with the following:

- (1) give the name, address, daytime telephone number, and where possible, fax number of the person who files the request. If the request is made by a group or association, the request must identify one person by name, address, daytime telephone number, and where possible, fax number, who shall be responsible for receiving all official communications and documents for the group;
- (2) identify the person's personal justiciable interest affected by the application, including a brief, but specific, written statement explaining in plain language the requestor's location and distance relative to the proposed facility or activity that is the subject of the application and how and why the requestor believes he or she will be adversely affected by the proposed facility or activity in a manner not common to members of the general public;
- (3) request a contested case hearing;
- (4) list all relevant and material disputed issues of fact that were raised during the public comment period and that are the basis of the hearing request. To facilitate the commission's determination of the number and scope of issues to be referred to hearing, the requestor should, to the extent possible, specify any of the executive director's responses to comments that the requestor disputes and the factual basis of the dispute and list any disputed issues of law or policy; and
- (5) provide any other information specified in the public notice of application.

C. Requirement that Requestor be an "Affected Person"

In order to grant a contested case hearing, the Commission must determine that a requestor is an "affected person." The factors to consider in making this determination are found in 30 TAC § 55.203 and are as follows:

- (a) For any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.
- (b) Governmental entities, including local governments and public agencies with authority under state law over issues raised by the application may be considered affected persons.
- (c) In determining whether a person is an affected person, all factors shall be considered, including, but not limited to, the following:
 - (1) whether the interest claimed is one protected by the law under which the application will be considered;

- (2) distance restrictions or other limitations imposed by law on the affected interest;
- (3) whether a reasonable relationship exists between the interest claimed and the activity regulated;
- (4) likely impact of the regulated activity on the health and safety of the person, and on the use of property of the person;
- (5) likely impact of the regulated activity on use of the impacted natural resource by the person; and
- (6) for governmental entities, their statutory authority over or interest in the issues relevant to the application.

D. Referral to the State Office of Administrative Hearings

30 TAC § 50.115(b) details how the Commission refers a matter to the State Office of Administrative Hearings: “When the commission grants a request for a contested case hearing, the commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.” 30 TAC § 50.115(c) further states: “The commission may not refer an issue to SOAH for a contested case hearing unless the commission determines that the issue: (1) involves a disputed question of fact; (2) was raised during the public comment period; and (3) is relevant and material to the decision on the application.”

V: Evaluation of Hearing Requests

A. Whether the Requestors Complied With 30 TAC §§ 55.201(c) and (d).

Waco submitted a timely written CCH request that included relevant contact information and raised disputed issues. The ED concludes that the CCH request of Waco substantially complies with the requirements of 30 TAC § 55.201.

B. Whether Requestors Meet the Requirements of an Affected Person

30 TAC § 55.203(b) states that local governments with authority under state law over issues raised by the application may be considered affected persons. However, Waco has no authority to regulate dairies located outside its boundaries in another county. Also, Waco has no authority under state law over whether the dairies comply with 30 TAC Chapter 321, Subchapter B regulating CAFOs.

In support of its position that it is an affected person in this case, Waco submitted over 200 pages of exhibits documenting the nutrient issue as it applies to the North Bosque River and Lake Waco. None of the documentation submitted by Waco identifies the Applicant by name as a source of nutrients. Waco's issue in this case is not the potential contamination that could be caused by this particular dairy, but the cumulative affects of all CAFO dairy operations in the North Bosque watershed. Additionally, many of the changes Waco wants in the permit go beyond TCEQ CAFO rules and challenge not this permit, but TCEQ rules. This is an entirely inappropriate use of the

CCH process. If Waco believes that the CAFO rules are not stringent enough, the proper forum for affecting change is to petition the Commission to perform a rulemaking or seek statutory relief from the Texas Legislature.

The ED also considered the factors listed in 30 TAC § 55.203(c) to determine whether Waco is an affected person for purposes of this permit application. Waco has water rights in Lake Waco, approximately 89 miles downstream from the dairy to the surface water intake points on the lake. Waco's interest in maintaining water quality in Lake Waco is protected by the rules and regulations covering this permit application and there is also a reasonable relationship between the interest claimed and the activity regulated. However, the distance from the dairy to the City of Waco and Lake Waco weigh heavily against Waco's claim they are affected persons for purposes of this particular permit application.

The draft permit would only authorize a discharge from the RCSs in the event of a rainfall event that exceeds the 25-year, 10-day storm event for this area. Additionally, runoff from LMUs and third party fields are considered non-point source runoff and exempt agricultural runoff, not regulated under the Clean Water Act as long as waste is land applied at agronomic rates and in compliance with TCEQ's CAFO rules.

Assuming the dairy had a discharge, the facility is approximately 7.2 downstream miles from reaching the North Bosque River, another 75 miles downstream to the point where the North Bosque enters Lake Waco, and another 6.8 miles from that point across the lake to the location of Waco's surface water intake for their drinking water supply. Waco argues that it should be granted affected person status as long as a facility has the potential to discharge contaminants that reach Lake Waco, regardless of distance. If Waco is affected in this case, any city in Texas can challenge any permit upstream of their drinking water supply, without regard to distance, through the CCH process.

Additionally, a discharge from this dairy is unlikely to impact the health and safety of persons who drink Waco's water or to impact the use of the waters of Lake Waco. At 82 miles upstream of the point where the North Bosque enters Lake Waco the distance is such that if there is a discharge from the facility, assimilation and dilution would occur long before the water reaches Lake Waco. However, even if the discharge could somehow survive that 82 mile trip downstream, it would then mix with Lake Waco water and would have to survive further dilution to travel an additional 6.8 miles across Lake Waco to reach the point where Waco extracts drinking water from the lake. See Attachment A. Therefore, Waco's interest is common to members of the general public and does not qualify as a personal justiciable interest. Through consideration of the factors in 30 TAC § 55.203(c) the ED recommends not finding Waco an affected party in relation to this dairy operation.

The ED recommends that the Commission find that Waco is not an affected person in regards to this permit application and deny the hearing request.

C. Whether Issues Raised Are Referable to State Office of Administrative Hearings (SOAH) for a Contested Case Hearing.

As noted above, the ED recommends denial of the hearing request because Waco is not an affected person as defined in TCEQ rules. However, in the event the commission determines that Waco is an affected person in this case the ED analyzed the issues raised in accordance with the regulatory criteria and provides the following recommendations regarding whether the issues are referable to SOAH.

All of the issues discussed below were raised during the public comment period, unless otherwise noted. None of the issues were withdrawn. All identified issues in the response are considered disputed, unless otherwise noted.

1. Whether the expansion of this facility constitutes a "new source" under federal law and if it is, whether it meets the requirements of 40 CFR § 122.4(i). (RTC #1 and #2)

This issue is a mixed question of fact and law. On one hand the issue involves the legal interpretation of these terms, but requires consideration of factual information to make the determination whether the facility is a "new source" or "new discharger." If the Applicant is a "new source" then it would also be relevant and material to the decision on the permit application regarding whether the proper determination has been made under 40 CFR § 122.4(a) and (d) that the facility will not cause or contribute to violation of water quality standards. The ED recommends referring this issue to SOAH.

2. Whether the following assumptions made in the Total Maximum Daily Load (TMDL) for phosphorus inputs into the North Bosque River have been properly addressed in the terms of the permit: (a) 40,450 dairy cows in the watershed; (b) 50% of solid manure from 40,450 dairy cows would be removed from the watershed; (c) Phosphorus in the diet of permitted cows would be limited to 0.4%; (d) Waste application on existing fields would be limited so that phosphorus would never exceed 200 parts per million (ppm); (e) Waste application rates would be limited to the phosphorus needs of the crop; and (f) Initial phosphorus on new fields would be 60 ppm and could not exceed that level. (RTC #3 and #4)

This issue is one of fact. The TMDL Implementation Plan (TMDL I-Plan) for the North Bosque River seeks to achieve phosphorus reductions targeted in the TMDL. The CAFO rules in 30 TAC Chapter 321 reflect adjustments to best management practices necessary to, over time, reach the TMDL target. However, if it could be shown the listed assumptions made in the TMDL were not properly addressed in the terms of the draft permit that information would be relevant and material to the decision on the permit application. The ED recommends referring this issue to SOAH.

- 3. Whether the draft permit correctly accounts for the estimated phosphorus that will be produced by the permitted number of animals at the dairy. (RTC #9)**

This issue is one of fact. The amount of phosphorus generated by a dairy is important for designing facilities that are capable of handling the waste loads generated. This information assists in assuring that the design criteria results in adequately sized management facilities. Therefore, this issue is relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

- 4. Whether the process used for calculating the phosphorus index meets the requirements in 30 TAC Chapter 321, Subchapter B. (RTC #10)**

This is an issue of fact. If it can be shown that the way the phosphorus index is calculated does not meet the rule requirements in 30 TAC Chapter 321, Subchapter B regulating CAFOs that issue would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

- 5. Whether the application rate for LMU #6 is properly calculated so as not to exceed the nitrogen crop requirement. (RTC #12)**

This is an issue of fact. If it can be shown that the application rate for LMU #6 is calculated so that the Applicant could exceed the nitrogen crop requirement that issue would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

- 6. Whether the process for calculating the water balance meets the requirements in 30 TAC § 321.38(e)(7)(B). (RTC #14)**

This is an issue of fact. The water balance is a hydraulic needs analysis that documents the typical irrigation demands of the proposed crop over the proposed irrigated land area. If it can be shown that the process for calculating the water balance does not meet the rule requirements in 30 TAC § 321.38(e)(7)(B) that issue would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

- 7. Whether the proposed buffering of LMUs in the permit application meets the requirements in 30 TAC § 321.40. (RTC #28 and #29)**

This is an issue of fact. If the proposed buffering of the LMUs does not meet the CAFO rule requirements that information would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

8. Whether the ED failed to make a best professional judgment (BPJ) determination that the best conventional pollutant control technology was used as required by 40 CFR § 125.3(d)(2). (RTC #6)

This is an issue of fact and though the ED determined that the requirements in the draft permit satisfy this requirement, this information is relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

9. Whether the methodology for calculating the agronomic rates in the NMP is in compliance with 30 TAC § 321.42(i). (RTC #15)

30 TAC § 321.42(i) requires the Applicant to calculate the waste application for beneficial use by following the methodology in the NRCS 590 Standard. If it could be shown that the Applicant did not use a methodology justifiable under the NRCS 590 standard or TCEQ rules, that information would be relevant and material to the decision on the application. The ED recommends referring this issue to SOAH.

10. Whether the ED has provided any required technical justifications that the draft permit meets water quality standards for phosphorus and attains the reductions in phosphorus loading set forth in the TMDL and TMDL-I Plan for the North Bosque River. (RTC #5)

TCEQ rules and provisions in the draft permit contain control actions and management measures to address the goals of the TMDL. A TMDL I-Plan is a goal, not a requirement. The TMDL I-Plan recognizes that an adaptive management approach is an appropriate means to manage phosphorus loading to a stream. The TMDL I-Plan emphasizes this approach to achieve the phosphorus reductions targeted in the TMDL. Adaptive management envisions adjustment of BMPs over time as necessary to reach this target. As Waco frames this issue, the ED has to prove that the adaptive management practices in the new rules and in this permit will fix Waco's problem with its drinking water. That is not the intent of the TMDL approach nor it is a proper placement for the burden of proof in this proceeding.

The new rules were intended to address the reductions in phosphorus set forth in the TMDL and TMDL I-Plan. The ED cannot "prove" they will work or not work without implementing them and having an opportunity to gauge their success. As raised by Waco, this issue is not relevant and material to a decision on the application. The ED recommends not referring this issue to SOAH.

11. Whether third party fields should be considered land management units. (RTC #7)

This issue is a question of law. 30 TAC § 321.42(j)(3) was specifically worded to reflect that "LMUs are not associated with third party fields."¹ The CAFO operator does not control the third party fields under contract with the CAFO. Application on third party fields is optional and represents "excess capacity to provide for more sound waste management by existing dairy

¹ 29 TexReg 6652, 6658 (July 9, 2004).

CAFOs.² Waco is actually taking issue with the CAFO rules and they acknowledge in the hearing request that there is no factual basis of dispute. The ED recommends not referring this issue to SOAH.

12. **Whether the ED must evaluate each of the following plans prior to permitting and make them available to the public throughout the public comment period due to the holding in the *Waterkeeper*³ case: Nutrient management plans (NMPs), comprehensive nutrient management plans (CNMP), nutrient utilization plans (NUPs), RCS management plans, and pollution prevention plans (PPPs). (RTC #8)**

This issue is a question of law regarding the interpretation of certain aspects of the *Waterkeeper* decision on CAFO permitting. The *Waterkeeper* decision found that NMPs were the equivalent of effluent limitations that should be incorporated into the permits. The ED is requiring individual CAFO permit applicants in the Bosque watershed to submit NMPs with the permit application. The NMPs are also subject to review and public scrutiny. The *Waterkeeper* case did not express an opinion on whether CNMPs, NUPs, RCS management plans, and PPPs must be incorporated into the permit. Such incorporation is not required by the current version of the CAFO rules. Therefore, this issue is not referable to SOAH because it does not involve disputed questions of fact, but interpretations of law and/or policy. The ED recommends not referring this issue to SOAH.

13. **Whether the NMP should include the lab analysis of solids from the settling basin. (RTC #13)**

This is a question of law. As noted in the RTC, TCEQ rules do not require analysis of settling basin solids. Therefore, this issue is a matter regarding the adequacy of TCEQ rules and is not referable to SOAH. The ED recommends not referring this issue to SOAH.

14. **Whether the Applicant submitting a complete copy of the certified NMP requires re-notice of the permit application. (RTC #16)**

Waco asserts no factual dispute to this issue, but states that a legal issue remains regarding whether the revised NMP will require the Applicant to re-notice the application. The NMP is a plan to address the amount, source, placement, form, and timing of the land application of nutrients. Changes to the NMP were made resulting in increases and decreases of the planned application rate on LMUs. However, regardless of these changes the application rate cannot exceed the maximum application rate set by the NMP based on the phosphorus index and other aspects of the NRCS practice standard Code 590. Since neither the phosphorus index nor maximum application rate in the NMP increased during the permitting process, then the increases and decreases in the planned application rate in the NMP were all within an allowable range that did not exceed the maximum rate. Thus, the NMP that was publicly noticed had only one change in the potential maximum rate

² *Id.* at 6692.

³ *Waterkeeper Alliance, Inc. v. Environmental Protection Agency*, 399 F.3rd 486 (2nd Cir. 2005).

and that change was a reduction in the maximum allowed on LMU #6, which made land application on that LMU more restrictive. Therefore, no re-notice of the permit is necessary. Additionally, compliance with the notice requirements are a matter of law and not referable to SOAH. Additionally, compliance with the notice requirements are a matter of law and not referable to SOAH. The ED recommends not referring this issue to SOAH.

15. Whether the Applicant is required to measure sludge volume in the lagoons before the permit is issued and annually thereafter. (RTC #17)

As a matter of law, 30 TAC § 321.39(c) prohibits the Applicant from allowing sludge accumulation to exceed the design volume and there is no CAFO rule governing the frequency of measurement for sludge in the lagoons. Therefore, this issue is not referable to SOAH because it does not involve disputed issues of fact. The ED recommends not referring this issue to SOAH.

16. Whether under the CAFO rules the NMP may be based on a single annual sample of wastewater and a single annual sample of the slurry produced at the facility. (RTC #18)

This issue is a question of law. The sampling provision for manure, litter, and wastewater management in 30 TAC § 321.36(e)(1) states an Applicant must sample: "At least one representative sample of wastewater, if applicable, and one representative sample of manure/litter shall be collected and analyzed each year for total nitrogen, total phosphorus, and total potassium." Therefore, the draft permit complies with TCEQ CAFO rule requirements and does not raise a disputed issue of fact. The ED recommends not referring this issue to SOAH.

17. Whether the Applicant is legally required to remove 50% of collectible manure from the watershed. (RTC #19)

The issue is a question of law. Texas Water Code (TWC) § 26.503(b)(2) gives new or existing CAFOs who seek to expand their herd size in the North Bosque watershed five options for dealing with 100% of the collectible manure, one of which is removing the manure from the watershed. Waco seeks to limit the Applicant to one of those options, while no such limitations are included in the CAFO regulations. The North Bosque TMDL has a goal of a 50% reduction in instream loading. Also, the TMDL I-Plan does not require a 50% haul-out of collectible manure. The ED recommends not referring this issue to SOAH.

18. Whether land application on LMUs that exceed 200 ppm for phosphorus should be prohibited. (RTC #20)

This issue is a question of law. As noted by Waco, "the CAFO rules allow this..." However, Waco argues that "200 ppm phosphorus is over seven times the amount of phosphorus needed for optimum growth of the proposed crops..." TCEQ rules prohibit land application on third party fields that exceed 200 ppm for phosphorus, so that issue is not in dispute. Therefore, there is no issue of fact in dispute regarding whether an applicant can land apply on LMUs that exceed 200 ppm of

phosphorus. TCEQ rules allow land application on LMUs that exceed 200 ppm for phosphorus, so Waco's issue is with the CAFO rules, not with rule compliance. The ED recommends not referring this issue to SOAH.

19. Whether the meaning of the phrase "not exceed the nitrogen application rate" in Section VII.A.8(e)(4)(i)(C) of the draft permit is ambiguous. (RTC #22)

This is a question of law. Waco requested the noted phrase be replaced by the phrase "not to exceed the nitrogen crop removal rate." The ED declined to make the requested change because 30 TAC § 321.42(i)(5)(A) requires that land application occur in accordance with the NRCS Practice Standard Code 590 and the current language expresses the limit for nitrogen application adequately. This issue is not referable to SOAH because it does not involve disputed questions of fact, but interpretations of law and/or policy. The ED recommends not referring this issue to SOAH.

20. Whether NRCS Code 590 should apply to third party fields when it is more restrictive than Section VII.A.8(e)(5)(i)(C)-(E). (RTC #24)

This is a question of law. 30 TAC § 321.42(j) requires that land application on third party fields in a major sole-source impairment zone be done in accordance with the applicable provisions in §§ 321.36 and 321.40 at an "agronomic rate" based on soil test phosphorus.⁴ Agronomic rates are defined in the CAFO rules as the land application of waste "at rates of application in accordance with a plan for nutrient management designed to enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth." There is no requirement in 30 TAC Chapter 321, Subchapter B that requires the language in the permit requested by Waco. Therefore, this issue should not be referred to SOAH because it does not involve disputed questions of fact, but interpretations of law and/or policy. The ED recommends not referring this issue to SOAH.

21. Whether NUPs and NMPs for each third party field should be submitted and reviewed during the permitting process. (RTC #25)

This issue is a question of law. TCEQ rules do not require NUPs for third party fields because the rules require land application to cease when phosphorus levels reach 200 ppm (the phosphorus level that triggers a NUP in an LMU). See 30 TAC § 321.42(j)(2). TCEQ rules do not require NMPs for third party fields during the permitting process. TCEQ rules require a written contract between the Applicant and owner/operator of any third party fields that they will beneficially land apply the transferred manure, litter, or wastewater in accordance with 30 TAC § 321.42(j)(1). Therefore, the draft permit complies with the CAFO rules and the issue is with the adequacy of TCEQ rules regarding third party fields, not a disputed issue of fact. The ED recommends not referring this issue to SOAH.

4 RTC response #24 incorrectly cites 30 TAC § 321.42(i)(5)(A), which as Waco points out, only refers to LMUs and not third party fields.

22. Whether the rules require the Applicant to submit records of crops and crop yields to be submitted to TCEQ. (RTC #26)

The issue is a question of law. Record keeping requirements at 30 TAC § 321.46(d)(8)(f) state the actual yield of each harvested crop must be recorded on a monthly basis. The information is available to the ED during field investigations and should be in the annual report submitted to the ED. However, there is no specific requirement in the rules that this information must be submitted to TCEQ. The ED recommends not referring this issue to SOAH.

23. Whether it should be required that the NMP address the full five years of the permit term rather than just the first year of the permit. (RTC #27)

This issue is a question of law. TCEQ CAFO rules do not require the NMP to be submitted prior to permit issuance. However, the *Waterkeeper* decision found that NMPs were the equivalent of effluent limitations that should be incorporated into the permits. The ED is requiring individual CAFO permit applicants in the Bosque watershed to submit NMPs with their permit applications. 30 TAC §§ 321.36(e) and (g) requires annual sampling and the NMP must be updated to modify application amounts based on soil testing and wastewater/manure/slurry testing. Because the NMP is likely to change each year based on site specific sampling results, the ED is not requiring an NMP for the term of the permit. The ED recommends not referring this issue to SOAH.

24. Whether the terms "vegetative buffer" and "temporary filter strips" in Section X.F are ambiguous. (RTC #28 and #29)

This issue is a matter of legal interpretation and is not referable to SOAH because it is not an issue of fact. The ED recommends not referring this issue to SOAH.

25. Whether the buffer distance to water bodies should be measured from the banks or middle of the stream. (RTC #30)

The ED agreed with Waco that the buffer distance measurement should occur from the nearest top of the bank, not from the center of the stream. Therefore, there is no disputed issue of fact and no reason to refer the issue to SOAH. The ED recommends not referring this issue to SOAH.

In the event the Commission refers this case to SOAH, the ED recommends referring issues #1 #9.

VI. Duration of the Contested Case Hearing

Should there be a contested case hearing on this permit application, the ED recommends that the duration for a contested case hearing on this matter of 9 months from the preliminary hearing to the presentation of a proposal for decision before the commission.

VII. Executive Director's Recommendation

The ED recommends the following actions by the Commission:

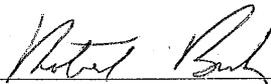
1. Find that Waco is not an affected person and deny the hearing request because the dairy is located approximate 89 upstream miles from Waco's surface water intake for their drinking water. Therefore, should a discharge occur, assimilation and dilution would occur long before the water reaches the surface water intake location on Lake Waco. At that distance from the facility, Waco interest is common to those of the general public and therefore, Waco does not have a personal justiciable interest in the permit application.
2. If the Commission finds either Waco to be an affected person, refer issues #1 - #9 to SOAH for a proceeding of nine months duration with the time period beginning with the preliminary hearing and concluding with presentation of a proposal for decision before the Commission.

Respectfully submitted,

TEXAS COMMISSION ON
ENVIRONMENTAL QUALITY

Glenn Shankle, Executive Director

Robert Martinez, Director
Environmental Law Division

By: 
Robert D. Brush, Staff Attorney
Environmental Law Division
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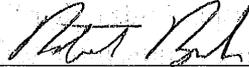
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ATTORNEYS FOR
THE EXECUTIVE DIRECTOR

CERTIFICATE OF SERVICE

I hereby certify that on January 4, 2008 the original and eleven true and correct copies of the "Executive Director's Response to Hearing Request" relating to the application of Jewel Alt and Onene Keuning dba O-Kee Dairy for Permit No. WQ0004108000 were filed with the Chief Clerk of the TCEQ and a copy was served to all persons listed on the attached mailing list via hand delivery, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.



Robert D. Brush, Staff Attorney
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FOR PERMIT NO. WQ0004108000
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ELECTED OFFICIALS:

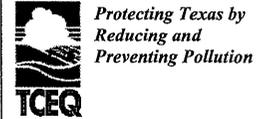
State Representative Sid Miller
P.O. Box 2910
Austin, Texas 78768-2910

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ATTACHMENT A

Jewel Alt and Oene Keuning CAFO

Map Requested by TCEQ Office of Legal Services



Texas Commission on Environmental Quality
 GIS Team (Mail Code 197)
 P.O. Box 13087
 Austin, Texas 78711-3087

January 2, 2008

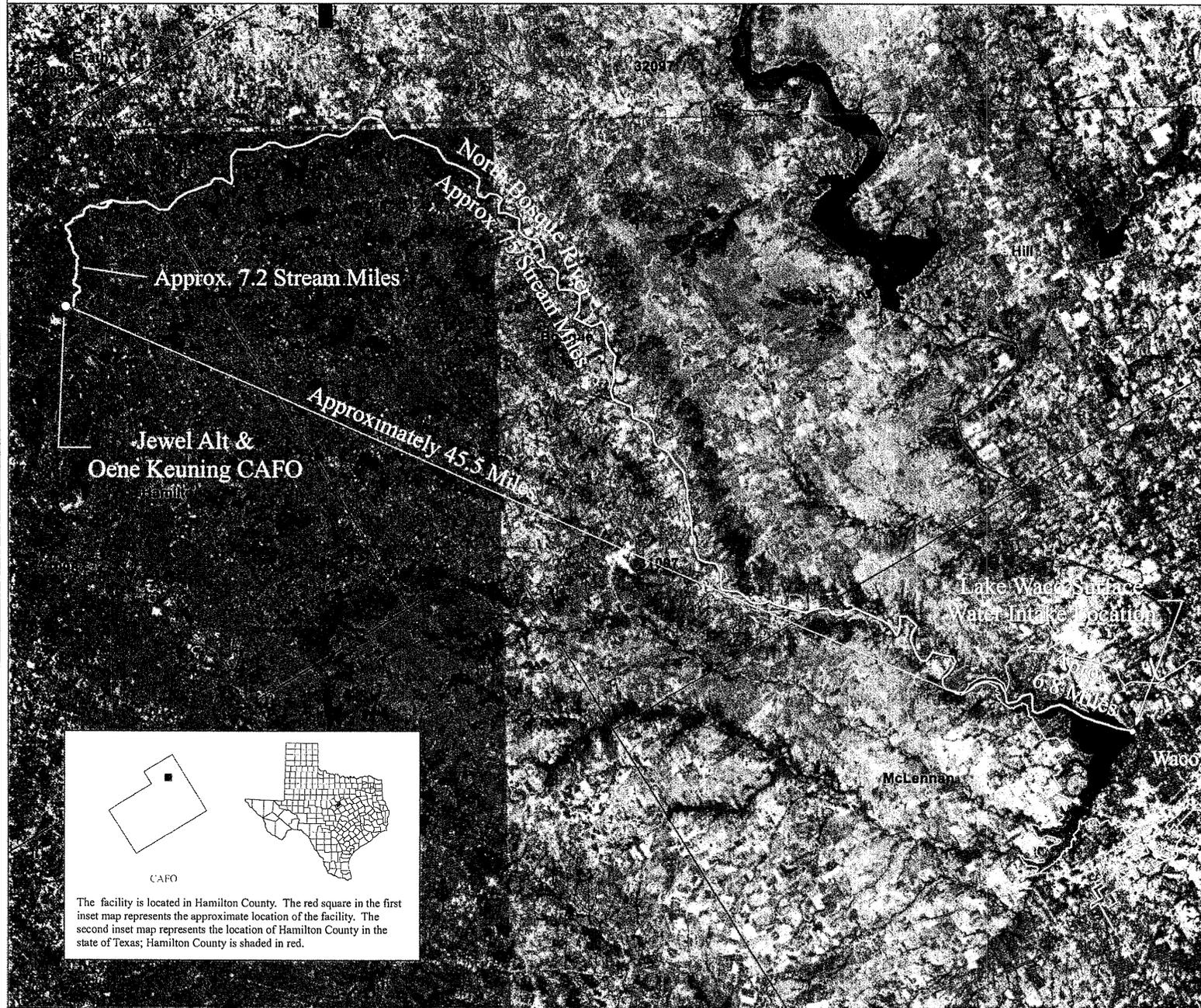


Projection: Texas Statewide Mapping System (TSMS)
 Scale 1:437,269

- Legend**
- CAFO
 - Estimated Distance to North Bosque River

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information and the requestor information from the applicant. The counties are U.S. Census Bureau 1992 TIGER/Line Data (1:100,000). The background of this map is a source photograph from the 2004 U.S. Department of Agriculture Imagery Program. The imagery is one-meter Color-Infrared (CIR). The image classification number is tx029_1-1.

This map depicts the following:
 (1) The approximate location of the CAFO. This is labeled "Jewel Alt & Oene Keuning CAFO".



The facility is located in Hamilton County. The red square in the first inset map represents the approximate location of the facility. The second inset map represents the location of Hamilton County in the state of Texas; Hamilton County is shaded in red.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This map was not generated by a licensed surveyor, and is intended for illustrative purposes only. No claims are made to the accuracy or completeness of the data or to its suitability for a particular use. For more information concerning this map, contact the Information Resource Division at (512) 239-0800.

ATTACHMENT B

FACT SHEET AND EXECUTIVE DIRECTOR'S PRELIMINARY DECISION

Permit No.: WQ0004108000

Owner: Jewel Alt

Regulated Activity: Concentrated Animal Feeding Operation; Dairy

Type of Application: Major Amendment,

Request: Water Quality Authorization

Authority: Federal Clean Water Act - Section 402; Texas Water Code §26.027; 30 Texas Administrative Code (TAC) Chapters 39, 305, and 321 Subchapter B; and Commission Policies and Environmental Protection Agency Guidelines

I. EXECUTIVE DIRECTOR'S RECOMMENDATION

The Executive Director has made a preliminary decision that this proposed permit, if issued, meets all statutory and regulatory requirements. The proposed permit shall be issued for a five year term in accordance with 30 Texas Administrative Code Chapter 305.

II. REASON FOR PROPOSED PROJECT

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment of Texas Pollutant Discharge Elimination System Permit No. WQ0004108000 for a Concentrated Animal Feeding Operation (CAFO) to authorize the permittee to expand an existing dairy facility from 690 head to a maximum of 999 head.

III. PROJECT DESCRIPTION AND LOCATION

Maximum Capacity: 999 total head
Land Management Units (LMUs) (acres): LMU#1- 37.5, LMU#2- 23.5, LMU#3-44,
LMU#4 – 69.5, LMU#5 – 24.8, LMU#6 – 86.1

The table below indicates the volume allocations for each Retention Control Structure (RCS):

RCS #1, #2, and settling ponds act in-series.

Minimum Volume Allocations for RCSs (Acre-feet)						
	Design Rainfall Event Runoff	Process Generated Wastewater	Minimum Treatment Volume	Sludge Accumulation	Water Balance	Total Required Capacity
RCS #1	0	2.76	0	2.84	0	5.60
RCS #2	15.09	0	0	1.21	4.19	20.49

The volume allocations are determined using Natural Resource Conservation Service standards, American Society of Agricultural Engineers standards, and/or site specific data submitted in the permit application.

Location: The facility is located at 4745 County Road 207 Hico, Texas 76457 in Hamilton County, Texas. Latitude: 31° 52' 49.2"N Longitude: -98° 01' 55.8"W.

Drainage Basin: The facility is located in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin.

IV. SUMMARY OF CHANGES FROM EXISTING AUTHORIZATION

The proposed permit includes revisions to 30 Texas Administrative Code Chapter 321, Subchapter B. The permittee is requesting to increase from 690 head to 999 head, and increase the land application acreage from 261 acres to 285.4 acres. The proposed permit requires an increase in RCS capacity from 8.7 acre-feet to 21.9 acre-feet to accommodate the required margin of safety. Furthermore, land application of manure and wastewater must be in accordance with a phosphorus based nutrient management plan. For additional changes from the existing authorization, see Attachment 1.

V. WATER QUALITY PROTECTION

Although the proposed permit is allowing an increase from 690 head to 999 head and a increase in land application acreage from 261 acres to 285.4 acres, this proposed permit includes many requirements not required by the existing authorization. As a result, this proposed permit is more stringent. The new requirements can be categorized based on their intended goal: reduce the potential for discharges, minimize the nutrient loading to land and surface water, and increase the oversight of operational activities by the TCEQ.

The following requirements are designed to reduce the potential for discharges:

1. The design rainfall event, at which time the CAFO is authorized to discharge, has been increased from a 25 year/24 hour rainfall event (7.3 inches) to a 25 year/10 day rainfall event (12.2 inches). This is approximately a 60 % increase to the design rainfall event which will result in an approximate 60% increase to the required design storm event storage capacity. This design storm storage capacity results in a larger portion of the structure above the 25 year-10 day pond marker that should remain dry, except during chronic or catastrophic rainfall events. The application also increases process water storage from 21 to 30 days in the design calculations. The increased storage capacity is anticipated to result in fewer discharges from RCSs at this CAFO.
2. A RCS management plan is required to be implemented. This plan must establish expected end of the month water storage volumes for each RCS. These maximum levels are based on the design assumptions used to determine the required size of the RCS. This plan assures the permittee will maintain wastewater volumes within the designed operating capacity of the structures, except during chronic or catastrophic rainfall events. The permittee must document and provide an explanation for all occasions where the water level exceeds the expected end of the month storage volumes. By maintaining the wastewater level at or below the expected monthly volume, the RCS will be less likely to encroach into the volume reserved for the design rainfall event and/or discharge during smaller rainfall events
3. The wastewater level in each RCS must be recorded daily. This requirement will assist the permittee in the implementation of the RCS management plan and will provide a visual indication of compliance.
4. The pond marker must have one foot increments. This requirement identifies the level of wastewater storage to assist the permittee in the implementation of the RCS management plan. It also acts as an enforcement tool for TCEQ to determine compliance with the RCS management plan.
5. The amount of sludge in each RCS must be maintained at or below the design sludge volume. Previously, sludge had to be maintained at or below 50% of the treatment capacity, and sludge accumulation was not expressly regulated in RCSs without treatment capacity. Excessive sludge accumulation can reduce the available wastewater storage volume. This more stringent requirement ensures that sufficient storage capacity is available for containment of the design wastewater volume and design rainfall event in all RCSs. Proper sludge management will reduce overflows associated with insufficient wastewater storage capacity. This permit requires that sludge accumulations in the RCSs be measured at least annually beginning in year there (3) of the permit.

6. Land application is prohibited between the hours of 12 a.m. and 4 a.m. This provision reduces the potential of irrigation related discharges associated with equipment malfunctions:

The following requirements are designed to help minimize the nutrient loading to land and the potential for nutrient loading to surface water:

1. The land application of manure and wastewater must be in accordance with a Nutrient Management Plan (developed by a certified nutrient management specialist; based on United States Department of Agriculture/Natural Resource Conservation Service (NRCS) Practice Standard 590) which provides the permittee the necessary information to properly manage the amount, form, placement and timing for the application of nutrients to the LMU. The proposed permit requires a nutrient management plan to be implemented upon issuance of this permit. This plan involves a site specific evaluation of the land management unit to include soils, crops, nutrient needs and includes the phosphorus index tool. The phosphorus index is a site specific evaluation of the risk potential for phosphorus movement into watercourses. The risk potential is determined by site characteristics such as soil phosphorus level, proposed phosphorus application rate, application method and timing, proximity of the nearest field edge to a named stream or lake, soil permeability, and soil erosion potential. The application rates are adjusted according to the risk potential. The higher the risk potential, the lower the application rate. In determining the application rate, the nutrient management plan also evaluates the amount of nutrients needed for optimal crop production and then balances that need between the nutrients in the soils and nutrient source (ie. manure and wastewater). Once the nutrients are in balance, there is minimal potential to have excess nutrients available to leave the site and affect water quality. The nutrient need is based on the most limiting nutrient which is phosphorus; thus a phosphorus application rate will be established for each individual LMU. This proposed permit requires all excess manure that cannot be land applied in accordance with the nutrient management plan to be removed (exported) from the facility (see item #3 below for additional discussion on excess manure).

This plan determines the application rate based on phosphorus, whereas the previous land application rates were based on the nitrogen requirement of the crop. In general, when calculating the application rate for coastal bermuda grass, if all variables remain unchanged except the crop nutrient requirement, the phosphorus application rate will be approximately 40% less than the nitrogen application rate. This reduced application rate will lower the potential for land applied nutrients to enter surface water and increase the amount of excess manure to be managed off-site. Record keeping and reporting requirements, such as the amount of manure produced, amount of manure and wastewater land applied, soil sampling and analyses, and the amount of manure removed from the facility, can be used to verify compliance with the nutrient management plan.

2. In addition to the requirements for implementation of a nutrient management plan, the permittee must operate under a Comprehensive Nutrient Management Plan (CNMP) certified by the Texas State Soil and Water Conservation Board. The CNMP must be developed by a qualified individual(s) in accordance with Texas State Soil and Water Conservation Board regulations. The CNMP must be implemented by December 31, 2006. The CNMP is a whole farm plan that addresses nutrient management from the origin in the feed rations to final disposition. The CNMP considers all nutrient inputs, onsite use and treatment, outputs, and losses. Inputs include animal feed, purchased animals, and commercial fertilizer. Outputs include animals sold, harvested crops removed from facility, and manure removed from the facility. Losses include volatilization, stormwater runoff, and leaching.
3. Manure, sludge or wastewater in excess of the amount allowed by the nutrient management plan must be delivered to a composting facility authorized by the executive director, delivered to a permitted landfill, beneficially used by land application to land located outside of the major sole source impairment zone, or provided to operators of third-party fields for beneficial use. By requiring specific outlets for excess manure, sludge or wastewater, this permit provision limits unregulated use of manure, sludge or wastewater within the watershed. Offsite use requires additional record-keeping to document how excess manure is used and provides a mechanism to track each permittee's contribution toward the 50% voluntary removal goal in the Bosque River Total Maximum Daily Load (TMDL).
4. Additional conservation practices have been imposed on LMUs adjacent to water in the state. These conservation practices include a 100 foot vegetative buffer, filter strips, vegetative barrier, and/or contour buffer strips. Site specific conditions and NRCS practice standards specify which conservation practices, in addition to the required 100 foot vegetative buffer, must be implemented. The conservation practices reduce erosion, suspended solids and nutrients in runoff from LMUs. This will improve the quality of stormwater runoff prior to entering water in the state. The table below shows the additional conservation practices for this CAFO. All buffers in LMUs will be completed and compliant with NRCS Code standards upon issuance of this permit. No application of manure sludge or wastewater can take place on an LMU unless buffer requirements are met. The additional temporary filter strips were designed as part of the CNMP for this CAFO. They provide protection during the transition from cropland to permanent grass on the respective LMUs without having to use contour buffer strips within the cropland LMUs.

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LMU #	Land Use	Vegetative buffer setback (feet)	NRCS Code 393 Filter Strip flow length (feet)	NRCS Conservation Plan Additional Temporary Filter Strips (feet)*
1	Tifton	150	33	0
2	Tifton	100	33	0
3	Tifton	100	28	0
4	Triticale	100	28	150
5	Triticale	100	33	150
6	Native Grass	100	0	0

* additional temporary filter strips include the NRCS Code 393 filter strips. (133 to 150 feet total).

The following requirements allow for increased oversight of operational activities by the TCEQ:

1. The permittee must provide a report to the TCEQ to substantiate a chronic rainfall discharge. After review of the report, if required by the executive director, the permittee must have an engineering evaluation by a licensed Texas professional engineer developed and submitted to the executive director. The report and engineering evaluation may be used to verify that the facility was maintained and operated according to the permit conditions. Information reviewed may include rainfall records at the CAFO, RCS wastewater levels preceding the discharge, irrigation records, and the current sludge volume. This requirement allows for closer scrutiny by TCEQ for discharges resulting from chronic conditions and provides documentation for enforcement of unauthorized discharges. The current authorization does not require chronic discharge documentation or an engineering evaluation.
2. The TCEQ regional office must be notified ten (10) working days prior to annual soil sample collection activities. This allows the TCEQ to observe sample collection and/or obtain split samples for duplicate analysis to help assure that data collected is credible to support application rates in the nutrient management plan. The current authorization does not require notification of soil sample collection activities.

3. Annual soil samples must be collected by one of the following persons: the NRCS; a certified nutrient management specialist; the Texas State Soil and Water Conservation Board; the Texas Cooperative Extension; or an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas. This ensures that samples are collected by individuals who are knowledgeable about soil sampling techniques and sample preservation. The current authorization does not specify who must collect the annual soil samples.
4. Some of the land application records maintained by the permittee must be submitted to the TCEQ annually. These records include date of manure, sludge or wastewater application to each LMU, location of the specific LMU and the volume applied during each application event, acreage of each individual crop on which manure, sludge or wastewater is applied, basis for and the total amount of nitrogen and phosphorus applied per acre to each LMU, including sources of nutrients other than manure, wastewater or sludge and on a dry basis, weather conditions, such as temperature, precipitation, and cloud cover, during the land application and 24 hours before and after the land application, and annual nutrient analysis for at least one representative sample of irrigation wastewater and one representative sample of manure (and sludge if land applied) for total nitrogen, total phosphorus, and total potassium. This will assist the TCEQ in monitoring compliance with land application requirements of the permit.

Although the proposed permit authorizes an expansion from 690 head to 999 head, the conditions being proposed in this permit are anticipated to significantly reduce the potential for pollutants entering receiving waters. These reductions are from limiting the potential for RCS overflows and managing land application of nutrients to LMUs. Regardless of the number of head, this permit requires all excess manure that cannot be land applied in accordance with the nutrient management plan to be removed from the facility (i.e. composting, landfill, outside of the watershed, or third-party fields). The application of export manure to third-party fields is now subject to stringent controls that include soil sampling and phosphorus-based application rates. The remaining manure and associated nutrients, if land applied to LMUs, must be managed according to the nutrient management plan, which restricts the land application rate based on site specific risk potential and the crop phosphorus requirement. The wastewater generated by the facility is retained and managed in RCSs that must be designed to exceed the federal sizing requirement. The RCSs are required to be designed with a margin of safety, which requires a larger portion of the RCSs to remain dry (i.e. the distance between the normal wastewater operating level and the spillway). This permit requires RCSs to accommodate rainfall and runoff from a 25 year/10 day rainfall event rather than the 25 year/24 hour rainfall event specified in Federal regulations. This results in approximately a 60% increase in the required design storm event storage capacity and is intended to reduce the potential for discharges from RCSs. The normal wastewater operating level is required to be closely monitored and maintained by implementation of the RCS management plan and increased recordkeeping by the permittee.

The dry storage area is available to capture rainfall from extended periods of wet weather without overflow. In the rare event of an overflow, the permittee must provide records to the TCEQ to prove that the overflow was unavoidable. If the overflow is determined to be unauthorized, this documentation provides TCEQ additional tools to initiate enforcement proceedings. These permit requirements, best management practices, and increased management and TCEQ oversight will protect water quality, when properly implemented.

VI. 303(d) LISTING and TOTAL MAXIMUM DAILY LOAD (TMDL)

The facility for this permit action is located within the watershed of the North Bosque River in Segment 1226 of the Brazos River Basin. The designated uses and dissolved oxygen criterion as stated in Appendix A of the Texas Surface Water Quality Standards (30 TAC §307.10) for Segment 1226 are contact recreation, public water supply, high aquatic life use, and 5.0 mg/L dissolved oxygen.

Segment 1226 is currently listed on the State's inventory of impaired and threatened waters (the 2002 Clean Water Act Section 303(d) list) for bacteria. The North Bosque River (Segments 1226 and 1255) was included in the 1998 Texas Clean Water Act 303(d) List and deemed impaired under narrative water quality standards related to nutrients and aquatic plant growth.

Segment No. 1226 is included in the agency's document *Two Total Maximum Daily Loads for Phosphorus in the North Bosque River*, adopted by the Commission on February 9, 2001 and approved by EPA on December 13, 2001. *An Implementation Plan for Soluble Reactive Phosphorus in the North Bosque River Watershed* (TMDL Implementation Plan) was approved by the Commission on December 13, 2002 and approved by the Texas State Soil and Water Conservation Board on January 16, 2003.

The TMDL for the North Bosque River, Segments 1226 and 1255, identified the amount of phosphorus introduced into these segments, ie. the load. Phosphorus load from two categories of sources was modeled to calculate the expected reductions in phosphorus load to meet instream water quality standards. Point sources included wastewater treatment plants; non-point sources included all other sources, such as CAFOs. The TMDL called for an average 50% reduction in the average concentration of soluble reactive phosphorus across river index stations and was to be achieved by a 50% reduction in soluble reactive phosphorus loadings from both point sources and non-point sources. The TMDL was developed assuming implementation of specific best management practices. This set of best management practices represents one way to achieve the water quality targets in stream and the overall reduction goal of the TMDL.

The TMDL was approved with the understanding that an adaptive management approach was an appropriate means to manage phosphorus load to the stream. The TMDL Implementation Plan emphasized this approach to achieve the phosphorus reductions targeted in the TMDL. Adaptive management envisions adjustment of management practices over time as necessary to reach this target. The TMDL anticipated that, to control loading to the stream, dairy CAFO permittees would implement those best management practices which best addressed site-specific conditions. Accordingly, the TMDL is not directly tied to the number of animal units permitted in the watershed; it is instead tied to the amount of nutrients that may be land applied consistent with management practices that ensure appropriate agricultural utilization of nutrients.

The provisions of this permit seek to reduce the amount of phosphorus (and other pollutants) discharged to water in the state from the CAFO. Primary management strategies for dairies, both voluntary and regulatory, were identified in the TMDL Implementation Plan which included: requiring phosphorus-based application rates when applying manure to LMUs; voluntarily implementing efforts to reduce the amount of phosphorus in dairy cow diets; and removing significant quantities of dairy-generated manure from the watershed for the production of compost, beneficial use on crops, or disposal. The permit application includes a nutrient management plan, which allocates the amount of nutrients to each LMU based on cropping patterns. The proposed permit requires a nutrient management plan to be implemented upon issuance of the permit and also specifies how the excess manure will be managed. The voluntary phosphorus diet reductions may be implemented through consultations between a nutritionist and the permittee. Any such dietary phosphorus reductions will result in reduced phosphorus concentrations in manure. These strategies are facets of CNMPs; CNMPs are required for all dairy CAFOs in the major sole-source impairment zone.

The CNMP must consider manure phosphorus content, the LMU area available for land application based on phosphorus-rate application, and the amount of excess manure that would remain. It must also account for all pathways of manure use or disposal, which would include removal to compost facilities, transport to another watershed for land application, or land application at onsite LMUs. The proposed permit requires the permittee to develop and implement a CNMP by December 31, 2006. In the interim, the permittee must implement the nutrient management or nutrient utilization plan submitted with the permit application and all subsequent updates.

These nutrient plans determine the nutrient application rate based on phosphorus, whereas the current authorization allows land application rates based on the nitrogen requirement of the crop. In general, the phosphorus application rate will be approximately 40% less than the prior nitrogen based application rates. These reduced application rates, based on phosphorus requirement of the crop or crop removal rates, will lower the potential for land applied nutrients to enter surface water and increase the amount of excess manure to be managed off-site. The implementation of these enhanced nutrient management practices within the watershed is expected to result in phosphorus load reduction consistent with the TMDL Implementation Plan.

Continuing education requirements in the proposed permit mandate that the operator be trained on management practices that are also consistent with the TMDL Implementation Plan regarding feed management and waste management practices.

The TMDL Implementation Plan also includes a recommendation that the CAFO rule making consider more stringent requirements for RCSs, in order to reduce overflows from RCSs. In response, several permit provisions have been proposed that are consistent with the TMDL Implementation Plan, which include:

1. RCSs must be designed to contain the volume associated with a 25 year/10 day rainfall event,
2. a permanent marker, graduated in one foot increments from the maximum sludge accumulation volume to the top of the spillway,
3. a RCS management plan detailing procedures for proper operation and management of wastewater levels based on design and assumptions of monthly expected operating levels,
4. daily monitoring records of wastewater levels,
5. notification of discharges within one hour,
6. discharge sample analyses must be submitted to the TCEQ, and
7. a report of discharges must be submitted to the TCEQ regional office, documenting that overflows from cumulative rainfall events were beyond the permittee's control.

In addition, the September 15, 2003 White Paper, *Standards for Waste Retention Facilities in the North Bosque River Watershed*, states that "...some of the technical professionals working on this committee are convinced that a significant part of the dairy source loading as being from retention facilities." Although not directly quantifiable, it is expected that a significant phosphorus load reduction will occur as a result of these enhanced design standards. Not only will the increased capacity requirements result in load reductions, but the additional operation, maintenance, recordkeeping and reporting requirements will aid in achieving the water quality target for the North Bosque River.

The TMDL Implementation Plan includes a recommendation that the CAFO rule making consider whether additional limitations or requirements are needed for runoff control and whether additional irrigation management is needed to prevent excessive runoff. In response, the proposed permit includes the requirement for a CNMP (mentioned above), and when required a 128-133-foot wide vegetative buffer between application areas and a water in the state. On LMUs where buffers are being established on cropland there is an additional 150 foot temporary filter strip. The proposed permit also specifies that automatic irrigation shutdown requirements may be imposed and prohibits nighttime land application from midnight to 4:00 a.m.

The RCS storage capacity requirements, nutrient management practices, increased TCEQ oversight of operational activities, and requirements of the TMDL Implementation Plan, which are incorporated into the draft permit, are designed to reduce the potential for this CAFO to contribute to further impairment from bacteria and nutrients such as total phosphorus. Furthermore, it is anticipated the implementation of the primary management strategies and permit provisions identified above will result in the reduction of soluble reactive phosphorus and achieve the reductions targeted in the TMDL. Attachment 2 outlines the proposed permit provisions discussed above and provides the purpose of each provision. The permit provisions are consistent with the approved TMDL that establishes measures for reductions in loadings of phosphorus (and consequently other potential pollutants) to the North Bosque River Watershed. Therefore, this permit is consistent with the requirements of the antidegradation implementation procedures in 30 Texas Administrative Code Section 307.5 (c)(2)(G) of the Texas Surface Water Quality Standards.

VII. DRAFT PERMIT RATIONALE

A. PERMIT CONDITIONS AND EFFLUENT LIMITATIONS

The following items were considered in developing the proposed draft permit:

1. The applications received on March 17, 2004 and subsequent revisions
2. TCEQ Permit No. 4108 issued September 7, 1999
3. Interoffice Memorandum from the Water Quality Assessment Team, Water Quality Assessment Section, Water Quality Division, dated July 20, 2004
4. Interoffice Memorandum from the Water Quality Standards Team, Water Quality Assessment Section, Water Quality Division, dated November 2, 2005
5. TCEQ rules
6. Bosque River TMDL Implementation Plan
7. NRCS Animal Waste Management Field Handbook, Nutrient Management Practice Standard Code 590 and the Field Office Technical Guidance for Texas
8. Environmental Protection Agency rules

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Manure or wastewater may only be discharged from a LMU or a properly designed, constructed, operated and maintained RCS into water in the state from this CAFO if any of the following conditions are met:

1. discharge of manure or wastewater resulting from a catastrophic condition other than a rainfall event that the permittee cannot reasonably prevent or control;
2. a discharge resulting from a catastrophic rainfall event from a RCS;
3. a discharge resulting from a chronic rainfall event from a RCS; or
4. a discharge resulting from a chronic rainfall event from a LMU that occurs because the permittee takes measures to de-water the RCS in accordance with the individual permit, relating to imminent overflow.

For a discharge resulting from a chronic rainfall event, the permittee shall submit a report to the appropriate TCEQ regional office that includes the CAFO records that substantiates that the overflow was a result of cumulative rainfall that exceeded the design rainfall event, without the opportunity for dewatering, and was beyond the control of the permittee. After review of the report, if required by the executive director, the permittee shall have an engineering evaluation by a licensed Texas professional engineer developed and submitted to the executive director.

All waste including any manure, bedding or feedwaste from the CAFO and any water contaminated by waste contact must be stored or utilized to comply with the permit and TCEQ Rules. The proposed permit satisfies the Environmental Protection Agency effluent limitation guidelines in 40 Code of Federal Regulations, Parts 412 and 122.

40 Code of Federal Regulations Section 122.44 specifies that any requirements, in addition to or more stringent than promulgated effluent limitation guidelines, must be applied when they are necessary to achieve state water quality standards. Water quality based effluent limitations must be established when TCEQ determines there is a reasonable potential to cause or to contribute to an in-stream excursion above the allowable ambient concentration of a state numeric criterion. For CAFO discharges the TCEQ must consider:

1. existing controls on point and non-point sources of pollution;
2. variability of the pollutant in the effluent; and
3. dilution of the effluent in the receiving water.

In proposing this permit, the TCEQ addresses considerations 2. and 3. since continuous discharges are prohibited and effluent discharges are authorized only during catastrophic conditions or a chronic or catastrophic rainfall event from a RCS properly designed, constructed, operated and maintained. The effluent pollutant levels are variable and effluent is usually not discharged. Additionally, during these climatic events, water bodies receiving a contribution of CAFO wastewater should be significantly diluted by other rainfall runoff.

Consideration 1. requires permit controls on CAFO discharges which will result in the numeric criteria of the water quality standards being met, thus ensuring that applicable uses of water in the state are attained. The principal pollutants of concern include organic matter causing biochemical oxygen demand, the discharge of ammonia-nitrogen, phosphorus and fecal coliform bacteria. This permit requires discharges to be monitored for the pollutants of concern. Existing technology does not allow for practicable or economically achievable numeric effluent limitations at this time. The Environmental Protection Agency has not promulgated effluent guidelines or numeric effluent limitations that would allow regular discharges of CAFO process wastewater or process-generated wastewater. The proposed permit addresses potential pollutant impacts through requirements including numerous narrative (non-numeric) controls on CAFO process wastewater and non-point sources of pollutant discharges associated with CAFOs. Setting specific water quality-based effluent limitations in this permit is not feasible (see 40 Code of Federal Regulations §122.44 (k)(3)). Instead, the proposed permit provides general and site specific provisions which are expected to result in compliance with water quality criteria and protection of attainable water quality as follows:

1. The approved recharge feature certification July 26, 2006 must be updated and maintained in the onsite pollution prevention plan. The recharge feature certification describes the location of the CAFO relative to certain natural and artificial features that could result in adverse ground water impacts. Groundwater has the potential to resurface as surface water. Therefore, preventing impacts to groundwater also provides protection to surface water.

The table below shows potential soil limitations identified in the recharge feature evaluation and the proposed management practices to address those limitations.

Soil Series & Map ID	Potential Soil Limitations	Best Management Practices
BxD: Brackett-Moletterre	Droughty Depth to bedrock	Land application: Application not to exceed infiltration rates No application during periods of saturation Production area; Liner will be installed in RCS expansion pond in accordance with TCEQ requirements Liner will be certified by a licensed Texas PE prior to placing pond back in service
PkB:Pidcoke	Droughty Depth to bedrock	Land application: Application not to exceed infiltration rates No application during periods of saturation
SsB: Slidell	Slow water movement	Land application: Application not to exceed infiltration rates No application during periods of saturation
ToC:Topsey	Seepage	Land application: Application not to exceed infiltration rates No application during periods of saturation

No soils in the slope range indicated in the recharge feature evaluation have been identified by the NRCS as highly erodible land (HEL). If erosion is detected, the LMUs will be protected with conservation farming practices within the standards of NRCS.

Recharge to the Trinity (Antlers) Aquifer may occur by the infiltration of precipitation on an outcrop/stream interception. The operational areas of the dairy are located west and upgradient of nearby Long Branch Creek. A smaller ephemeral ancillary drainage that feeds the Long Branch runs west to east throughout the middle of the property. Both the Long Branch and the ancillary drainage will be protected by buffer zones and filter strips as indicated in the map for the land application areas.

2. RCSs at the CAFO must be adequately lined and certified by a professional engineer; alternatively, certification must document a lack of hydrologic connection between wastewater in the RCS and groundwater. Groundwater has the potential to resurface as surface water. Therefore, preventing impacts to groundwater also provides protection to surface water. A liner certification, certified by a professional engineer, for each RCS was submitted with the application. The table presented below shows the dates,

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RCS	Construction Date	Liner Certification Date	Capacity Certification Date
RCS 1	1992	2/17/97	12/20/96
RCS 2	Proposed	N/A	N/A
Settling Basin 1	Prior 2002	2/22/02	N/A
Settling Basin 2	Prior 2002	12/18/02	N/A
Manure Storage	2004	3/01/04	N/A

3. RCS design criteria must include volumes for the design rainfall event, sludge, process generated wastewater, to meet "best available technology economically achievable" and "best practicable control technology". These design criteria must be supplemented with a water balance analysis that demonstrates that wastewater can be sufficiently stored and irrigated and that consumption of the wastewater will not induce runoff or create tailwater. The application includes design calculations, certified by a professional engineer, which determine the design criteria for each RCS system. The permittee must increase the RCS volume capacity to meet the design criteria. The permittee is increasing the storage on this CAFO by 18.02 acre-feet, from 8.07 acre-feet to 26.09 acre-feet.
4. New RCSs must maintain two vertical feet of material equivalent to construction materials between the top of the embankment and the structure's spillway to protect from overtopping the structure. All RCSs on this CAFO have spillways.
5. Recordkeeping and reporting requirements are designed to help ensure that the permittee complies with the permit provisions. Some of these requirements include daily records of RCS wastewater levels and measurable rainfall; weekly records of manure, wastewater and sludge removed from the facility, inspections of control facilities and land application equipment; and monthly records of manure, wastewater and sludge land applied. The permittee is required to submit an annual report to the TCEQ which includes a subset of the permit recordkeeping requirements.
6. Discharge of wastewater from irrigation is prohibited, except a discharge resulting from irrigation events associated with imminent overflow conditions. Precipitation-related runoff from LMUs is allowed by the permit, when land application practices are consistent with a nutrient management or nutrient utilization plan.
7. Solid waste management provisions specify requirements which minimize adverse water quality impacts.

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8. The entry of uncontaminated stormwater runoff into RCSs must be minimized. The site includes berms to both direct contaminated runoff into the RCSs and prevent uncontaminated stormwater runoff from entering the RCSs.
9. The permittee shall take all steps necessary to prevent any adverse effect to human health or safety, or the environment.
10. The permittee shall provide the following notifications:
 - (a) Any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ, orally or by facsimile transmission within twenty-four (24) hours and in writing within five days of becoming aware of the noncompliance.
 - (b) Discharges resulting from a chronic or catastrophic rainfall event or catastrophic conditions must be reported orally within one hour of the discovery of the discharge and in writing within fourteen (14) working days.

Where a specific chemical pollutant does not have a water quality criterion and that pollutant is present in CAFO effluent at a concentration that has the reasonable potential to cause, or contribute to, an excursion above a narrative criterion in the state water quality standards, TCEQ must establish effluent limits, except as provided by 40 Code of Federal Regulations Section 122.44(k).

Nutrient pollutants of concern have narrative criteria and are discharged in CAFO wastewater. As described above, effluent limitations are not feasible at this time. Nutrient management has been addressed through the imposition of a three tiered approach, based on the soil phosphorus concentration.

For LMUs with a soil phosphorus concentration of less than 200 ppm in Zone 1 (0-6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth, a certified nutrient management plan is required. This plan is based on the NRCS Practice Standard Code 590. It uses site specific criteria to determine the phosphorus application rate based on the crop requirement. It addresses the amount, source, placement, form, and timing of the application of all nutrients and soil amendments to meet crop needs. As previously discussed in Section V. of this Fact Sheet, the nutrient application rate is based on the most limiting nutrient which is phosphorus, thus there is minimal potential to have excess nutrients available to leave the site and affect water quality.

As required by Texas Water Code § 26.504, for LMUs with a soil phosphorus concentration of 200 - 500 ppm in Zone 1 (0-6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth, the permittee must submit a nutrient utilization plan based on crop removal. At the discretion of the certified nutrient management specialist, the nutrient utilization plan may also include a phosphorus reduction component. This nutrient utilization plan must be submitted to the TCEQ for review and approval. The nutrient utilization plan is a revised nutrient management plan developed utilizing the same NRCS 590 Practice Standard tool to evaluate the site specific elements in the LMU such as slope and distance to water courses, the rates, methods, schedules of manure application, and best management practices including physical structures and conservation practices utilized by the CAFO to assure the beneficial use of manure and wastewater is conducted in a manner that prevents phosphorus impacts to water quality. A crop removal application rate is the amount of nutrients contained in and removed by the proposed crop.

As required by Texas Water Code § 26.504, for LMUs with a soil phosphorus concentration of greater than 500 ppm in Zone 1 (0-6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth, the nutrient utilization plan must be based on crop removal and include a phosphorus reduction component. A phosphorus reduction component is a management practice, incorporated into the nutrient utilization plan, that is designed to further reduce the soil phosphorus concentration by means such as phosphorus mining, moldboard plowing, or other practices utilized by the permittee. This revised nutrient utilization plan must also be submitted to the TCEQ for review and approval. Permittees required to operate under a nutrient utilization plan with a phosphorus reduction component must show a reduction in the soil phosphorus concentration within 12 months or may be subject to enforcement actions.

After a nutrient utilization plan is implemented, the permittee shall land apply in accordance with the nutrient utilization plan until the soil phosphorus is reduced below 200 ppm. Each of these plans must be developed and certified by a nutrient management specialist. This three tiered approach, when implemented, should minimize the potential for nutrients to accumulate in the soil and reduce nutrient concentrations in LMUs. Failure to operate in accordance with a nutrient management plan or nutrient utilization plan may constitute a violation of state law and this permit and may subject the permittee to enforcement action.

B. TECHNOLOGY-BASED REQUIREMENTS

Technology-based effluent limitations are considered in the proposed individual permit. Effluent limitations are based on "best conventional pollutant control technology", and "best available technology economically achievable", a standard which individually represents the best performing existing technology in an industrial category or subcategory. "Best available technology economically achievable" and "best conventional pollutant control technology" effluent limitations may never be less stringent than corresponding effluent limitations based on "best practicable control technology", a standard applicable to similar discharges before March 31, 1989 under Clean Water Act §301(b)(1)(A).

Frequently, the Environmental Protection Agency adopts nationally applicable guidelines identifying the "best practicable control technology", "best conventional pollutant control technology", and "best available technology economically achievable" standards to which specific industrial categories and subcategories are subject. When such guidelines are published, the Clean Water Act, §402(a)(1) requires that appropriate "best conventional pollutant control technology" and "best available technology economically achievable" effluent limitations be included in permitting actions on the basis of the permitting authority's best professional judgement.

The Environmental Protection Agency standard for CAFOs, as contained in 40 Code of Federal Regulations Parts 122 and 412, is no discharge of waste or wastewater from animal feeding operations into water of the United States, except when chronic or catastrophic rainfall or catastrophic conditions cause an overflow. All waste including any manure, litter, bedding or feedwaste from animal feeding operations and any water contaminated by waste contact must be stored or utilized to comply with this individual permit, which requires applicable technology control.

The conditions of the proposed permit have been developed to comply with the technology-based standards of 40 Code of Federal Regulations Part 412. The proposed permit includes provisions and performance standards based on NRCS technical standards rather than numeric limitations, to address the collection, storage, treatment and land application of manure or wastewater and to limit pollutants in discharges. This permit exceeds these standards by requiring the 25-year/10-day design storm event storage volume.

C. WATER QUALITY-BASED REQUIREMENTS

The proposed permit would authorize the land application of manure and wastewater, and would only allow a discharge to surface water when chronic or catastrophic rainfall or catastrophic conditions result in an overflow of a properly designed, operated and maintained RCS. No water quality impacts are expected to occur from land application based upon properly prepared and implemented nutrient management practices.

Instead of numeric water quality based effluent limitations, this permit establishes management practices to restrict discharges to occur only during defined chronic or catastrophic rainfall events or catastrophic conditions. Discharges occurring during these conditions would be highly intermittent in nature and should be significantly diluted by rainfall runoff.

D. MONITORING REQUIREMENTS

Monitoring requirements were established based on TCEQ rules, and 40 Code of Federal Regulations Part 412. For any discharges, grab samples must be collected daily and analyzed for Biochemical Oxygen Demand, Total and Fecal Coliform, Total Dissolved Solids, Total Suspended Solids, Nitrate, Total Phosphorus, pH, Ammonia Nitrogen and pesticides (if suspected). Samples must be taken annually from land application areas and analyzed for Nitrate, Phosphorus, Potassium, Sodium, Magnesium, Calcium, Soluble salts/electrical conductivity, and pH. Discharges and soil analyses are reported to TCEQ.

E. REQUIREMENTS FOR BENEFICIAL USE OF MANURE AND WASTEWATER BY LAND APPLICATION AND EVAPORATION

The proposed permit contains requirements related to the collection, handling, storage and beneficial use of manure and wastewater by land application or evaporation. These requirements were established based on TCEQ rules, Environmental Protection Agency guidance, NRCS Field Operations Technical Guidance and the Animal Waste Management Field Handbook, recommendations from the TCEQ's Water Quality Assessment Team, and best professional judgement.

40 Code of Federal Regulations Section 122.42(e)(1) specifies that a nutrient management plan must be developed and implemented by July 31, 2007. The elements of a nutrient management plan as listed in 40 Code of Federal Regulations Section 122.42(e)(1) have been incorporated into this permit. This permit requires a nutrient management plan and each of the required elements to be implemented upon issuance of this permit. In relation to these items, the proposed permit is more stringent than federal requirements.

This permit also requires the development and implementation of a CNMP by December 31, 2006. The CNMP must consider manure and wastewater handling and storage, land treatment practices, nutrient management, documentation of implementation and management activities associated with the CNMP, feed management (voluntary), and alternative uses for manure. This requirement is not required by federal rule and is, consequently, more stringent than federal requirements.

The proposed permit authorizes the use of third-party fields, i.e. land not owned, operated, controlled, rented, or leased by the CAFO owner or operator. The permittee must have a contract with the operator of the third-party fields. The written contract must require all transferred manure or wastewater to be beneficially applied to third-party fields in accordance with the applicable requirements in 30 Texas Administrative Code §321.36 and §321.40 at an agronomic rate based on soil test phosphorus in Zone 1 (0-6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth. A certified nutrient management specialist must annually collect soil samples from each third-party field used and have the samples analyzed in accordance with the requirements for permitted LMUs. The permittee is prohibited from delivering manure or wastewater to an operator of a third-party field once the soil test phosphorus analysis shows a level equal to or greater than 200 ppm in Zone 1 (0-6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth or after becoming aware that the third-party operator is not following the specified requirements and the contract. The permittee will be subject to enforcement action for violations of the land application requirements on any third-party field. The third-party fields must be identified in the pollution prevention plan. The permittee must submit a quarterly report with the name, locations, and amounts of manure and wastewater transferred to operators of third-party fields.

VIII. THREATENED OR ENDANGERED SPECIES

The discharge from this permit action is not expected to have an effect on any federal endangered or threatened aquatic or aquatic dependent species or proposed species or their critical habitat. This determination is based on the United States Fish and Wildlife Service's (USFWS) Biological Opinion on the State of Texas authorization of the Texas Pollution Discharge Elimination System (TPDES) dated September 14, 1998 and the October 21, 1998 update. To make this determination for TPDES permits, TCEQ and Environmental Protection Agency only considered aquatic or aquatic dependent species occurring in watersheds of critical concern or high priority as listed in Appendix A of the USFWS Biological Opinion. This determination is subject to reevaluation due to subsequent updates or amendments to the Biological Opinion. The permit does not require Environmental Protection Agency review with respect to the presence of endangered or threatened species.

IX. PROCEDURES FOR FINAL DECISION

When an application is declared administratively complete, the Chief Clerk sends a letter to the applicant instructing the applicant to publish the Notice of Receipt of Application and Intent to Obtain Permit in the newspaper. In addition, the Chief Clerk instructs the applicant to place a copy of the application in a public place for review and copying in the county where the facility is or will be located. This application will be in a public place throughout the comment period. The Chief Clerk also mails this notice to any interested persons and, if required, to landowners identified in the permit application. This notice informs the public about the application, and provides that an interested person may file comments on the application or request a contested case hearing or a public meeting.

Once a draft permit is completed, it is sent, along with the Executive Director's preliminary decision, as contained in the fact sheet, to the Chief Clerk. At that time, Notice of Application and Preliminary Decision will be mailed to the people identified on the Office of the Chief Clerk mailing list and published in the newspaper. This notice sets a deadline for making public comments. The applicant must place a copy of the Executive Director's preliminary decision and draft permit in the public place with the application.

Any interested person may request a public meeting on the application. A public meeting is intended for the taking of public comment, and is not a contested case proceeding.

After the public comment deadline, the Executive Director prepares a response to all significant public comments on the application or the draft permit raised during the public comment period. The Chief Clerk then mails the Executive Director's Response to Comments and Final Decision to people who have filed comments, requested a contested case hearing, or requested to be on the mailing list. This notice provides that a person may request a contested case hearing or file a request for reconsideration of the Executive Director's decision within 30 days after the notice is mailed.

The Executive Director will issue the permit unless a written hearing request or request for reconsideration is filed within thirty (30) days after the Executive Director's Response to Comments and Final Decision is mailed. If a hearing request or request for reconsideration is filed, the Executive Director will not issue the permit and will forward the application and request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

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If the Executive Director calls a public meeting or the Commission grants a contested case hearing as described above, the Commission will give notice of the date, time, and place of the meeting or hearing. If a hearing request or request for reconsideration is made, the Commission will consider all public comments in making its decision and shall either adopt the Executive Director's response to public comments or prepare its own response.

For additional information about this application, contact Mr. Bill Ross at 254-965-9200

Bill Ross Date _____
Land Application Team
Wastewater Permitting Section
Water Quality Division

Attachment 1

	Existing Authorization #4108 issued April 11, 2002	Proposed Permit
Head Count	690	999
RCS Required Capacity (acre-feet)	8.7	26.09
RCS Actual Capacity (acre-feet)	13.7	TBD
additional capacity (acre-feet)	5	Permit requires RCS enlargement to meet required capacity
PE certification of RCS design volumes	not required	Required
design rainfall criteria	25 year/24 hour rainfall event	25 year/10 day rainfall event
RCS management plan	not required	Required
RCS depth marker	25 year/24 hour designation	25 year/24 hour designation; 25 year/10 day designation; and 1 foot graduations to bottom of pond
management of sludge volume in RCSs	not required in RCS without treatment capacity	clean out required when sludge volume meets or exceeds the sludge volume designed for each RCS. Sludge volume accumulations measured annually beginning in year 3 of the permit.

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RCS discharge monitoring	monitored for fecal coliform, 5-day biochemical oxygen demand, total suspended solids, ammonia nitrogen, and any pesticide which the operator has reason to believe could be in the discharge	monitored for all previous parameters plus total coliform, total dissolved solids, nitrate, and total phosphorus
Chronic discharge determination	not required	Required
land application of sludge	based on nitrogen requirement of the crop	only in accordance with a phosphorus based nutrient management plan that accounts for elevated nutrient concentrations
agronomic rate	based on nitrogen requirement of crop	based on phosphorus requirement of crop
land application of manure and wastewater	at agronomic rates unless soil phosphorus levels exceed 200 ppm	in accordance with a phosphorus based nutrient management plan, unless soil phosphorus levels exceed 200 ppm
phosphorus index risk assessment	not required	Required
additional manure removed from the facility	unlimited options for final disposition	compost facility, landfill or beneficially land applied outside the watershed, or beneficially land applied to third-party fields

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Buffer distances between land application and surface water	100 ft	100 ft plus additional NRCS conservation practices including additional buffers of from 28-33 feet (128 to 133 feet) and temporary buffers of an additional 150 feet
nighttime land application	allowed	prohibited between 12 am and 4 am
soil sampling notification	no notice required	regional office notification prior to sampling
soil sampling	permittee collects annually	CNMS collects annually

Attachment 2

Permit Provision	Purpose
25 year/24 hour rainfall event to 25 year/10 day rainfall event	<ul style="list-style-type: none"> • 60% increase to the storage capacity reserved for chronic rainfall • an additional portion of the structure above the 25 year/24 hour marker will also remain dry, except during chronic or catastrophic rainfall events • will reduce overflow frequency
RCS management plan	<ul style="list-style-type: none"> • predicts expected end of the month water storage volumes for each RCS • requires permittee to manage water level accordingly • requires permittee to maintain minimum wastewater volume • will reduce overflow frequency
monitor and record RCS wastewater level daily	<ul style="list-style-type: none"> • provides visual indication of compliance

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<p>One foot increments on pond marker</p>	<ul style="list-style-type: none"> • identifies the level of wastewater storage to assist the permittee in the implementation of RCS management plan • enforcement tool
<p>maintain RCS sludge volume at or below designed sludge volume</p>	<ul style="list-style-type: none"> • requires sludge removal to maintain the required wastewater storage capacity • will reduce overflows associated with insufficient wastewater storage capacity
<p>Land application prohibited 12 am to 4 am</p>	<ul style="list-style-type: none"> • reduces the potential of irrigation related discharges associated with equipment malfunctions
<p>Nutrient Management Plan (based on crop requirement rate)</p>	<ul style="list-style-type: none"> • 40 % reduction in land application rate by going from N rate to P rate • establishes the annual application rate based on annual soil analyses, phosphorus index, and management practices used at the facility • based on NRCS Practice Standard 590
<p>Nutrient Utilization Plan (based on crop removal rate)</p>	<ul style="list-style-type: none"> • stabilizes and/or reduces phosphorus on high phosphorus LMUs by establishing the annual application rate based on the amount of nutrients removed by the previous year's harvest based on NRCS Practice Standard 590
<p>CNMP</p>	<ul style="list-style-type: none"> • whole farm mass balance of nutrients which considers all inputs, onsite use and treatment, outputs, and losses. • Inputs include animal feed, purchased animals, fertilizer • Outputs include animals sold, harvested crops removed from facility, and manure removed from the facility • Losses include volatilization, runoff, and leaching

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<p>Excess manure must go to compost, landfill, outside of watershed, or third-party fields</p>	<ul style="list-style-type: none"> • limits unregulated use of manure within the watershed • offsite use incurs additional record-keeping to document how excess manure is used. • provides mechanism to track 50% voluntary removal goal in TMDL
<p>chronic discharge determination</p>	<ul style="list-style-type: none"> • discharges resulting from chronic conditions are more closely scrutinized by TCEQ Regional Office • validates chronic conditions claim • provides documentation to TCEQ for enforcement of unauthorized discharge
<p>soil sampling notification</p>	<ul style="list-style-type: none"> • allows the TCEQ to observe sample collection and/or obtain split samples for duplicate analysis • assures data collected is credible to support application rates in nutrient management plan
<p>soil sampling by technical service provider</p>	<ul style="list-style-type: none"> • ensures that samples are collected by unbiased individuals who are knowledgeable about soil sampling techniques and sample preservation
<p>Conservation Practices for LMUs adjacent to water of the state (100 foot vegetative buffer, filter strips, vegetative barrier, contour buffer strips)</p>	<ul style="list-style-type: none"> • reduce erosion, suspended solids and nutrients in runoff from LMUs. • site specific conditions and NRCS practice standards specifies which Conservation Practices must be implemented

ATTACHMENT C



TPDES Permit No. WQ0004108000 This Permit
supersedes and replaces Permit No.
WQ0004108000 issued on 4/11/2002.
[For TCEQ use only EPA ID No. TX0128619]

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
P.O. Box 13087
Austin, Texas 78711-3087

TPDES PERMIT FOR CONCENTRATED ANIMAL FEEDING OPERATIONS
under provisions of
Section 402 of the Clean Water Act
Chapter 26 of the Texas Water Code

I. Permittee:

- A. Owner Jewel Alt
- B. Operator Oene Keuning
- C. Business Name O-Kee Dairy.
- D. Owner Address 299 County Road 4135, Canton, Texas 75103

II. Type of Permit: Major Amendment, Water Quality

Nature of Business Producing Waste: CAFO; Dairy; SIC No. 02410

General Description and Location of Waste Disposal System:

Maximum Capacity: 999 total head

Site Plan: See Attachment A.

Retention Control Structures (RCS) total required capacities without freeboard (acre-feet):

RCS #1- 5.60, RCS #2- 20.49, Settling ponds and RCS #1 and #2 act in-series.

Land Management Units (LMUs) (acres): LMU#1 - 37.5, LMU#2 -23.5, LMU#3 - 44.0, LMU#4 - 69.5, LMU#5 - 24.8, LMU#6 - 86.1; for locations, see Attachment B.

Location: The facility is located at 4745 County Road 207 Hico, Texas 76457 in Hamilton County, Texas.. Latitude: 31° 52' 49.2"N Longitude: -98° 01' 55.8"W. See Attachment B.

Drainage Basin: The facility is located in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin.

This Permit contained herein shall expire at midnight, five years after the date of Commission approval.

ISSUED DATE:

For the Commission

V. Definitions. All definitions in Chapter 26 of the Texas Water Code, 30 Texas Administrative Code (TAC) § 305 and 321, Subchapter B shall apply to this permit and are incorporated by reference.

VI. Permit Applicability and Coverage

A. Discharge Authorization. No discharge is authorized by this permit except as allowed by the provisions in this permit and 40 Code of Federal Regulations Chapter 412, which is adopted by reference in 30 TAC § 305.541.

B. Application Applicability. The application pursuant to which the permit has been issued is incorporated herein; provided, however, that in the event of a conflict between the provisions of this permit and the application, the provisions of the permit shall control.

VII. Pollution Prevention Plan (PPP) Requirements

A. Technical Requirements

1. PPP General Requirements

(a) The permittee shall update and implement a PPP for this facility upon issuance of this permit. The PPP shall:

- (1) be prepared in accordance with good engineering practices;
- (2) include measures necessary to limit the discharge of pollutants to surface water in the state;
- (3) describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this permit;
- (4) include all information listed in Section VII.A.;
- (5) identify specific individual(s) who is/are responsible for development, implementation, operation, maintenance, inspections, recordkeeping, and revision of the PPP. The activities and responsibilities of the pollution prevention personnel shall address all aspects of the facility's PPP;
- (6) be signed by the permittee or other signatory authority in accordance with 30 TAC § 305.44 (relating to Signatories to Applications); and
- (7) be retained on site.

(b) The permittee shall amend the PPP:

- (1) before any change in the number or configuration of LMUs;
- (2) before any increase in the maximum number of animals or maximum number of milking cows;
- (3) before operation of any new control facilities;
- (4) before any change that has a significant effect on the potential for the discharge of pollutants to water in the state;
- (5) if the PPP is not effective in achieving the general objectives of controlling discharges of pollutants from the production area or

- LMUs; or
- (6) within 90 days following written notification from the executive director that the plan does not meet one or more of the minimum requirements of this permit.
- (c) Maps. The permittee shall maintain the following maps as part of the PPP.
- (1) Site Map. The permittee shall update the site map as needed to reflect the layout of the facility. The map shall include, at a minimum, the following information: facility boundaries; pens; barns; berms; open lots; manure storage areas; areas used for composting; RCSs or other control facilities; LMUs which are owned, operated, or under the control of the facility owner or operator which will be used for land application of manure, sludge, compost, settling basin solids or wastewater; water wells, abandoned and in use, which are on-site or within 500 feet of the facility boundary; all springs, lakes, or ponds located on-site or within one mile of the facility boundary; and dead animal burial sites.
- (2) Land Application Map. Natural Resource Conservation Service (NRCS) soil survey maps of all LMUs shall depict:
- (i) the boundary of each LMU and acreage;
- (ii) all buffer zones required by this permit; and
- (iii) the unit name and symbol of all soils in the LMU.
- (d) Potential Pollutant Sources/Site Evaluation
- (1) Potential Pollutant Sources. The PPP shall include a description of potential pollutant sources and indicate all measures that will be used to prevent contamination from the pollutant sources. Potential pollutant sources include any activity or material that may reasonably be expected to add pollutants to surface water in the state from the facility.
- (2) Soil Erosion. The PPP shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion. If these areas have the potential to contribute pollutants to surface water in the state, the PPP shall identify measures used to limit erosion and pollutant runoff.
- (3) Control Facilities. The PPP shall include the location and a description of control facilities. The control facilities shall be appropriate for the identified sources of pollutants at the CAFO.
- (4) Recharge Feature Certification. The recharge feature certification dated July 26, 2006 shall be implemented, updated by the permittee as often as necessary, and maintained in the PPP.
- (e) Spill Prevention and Recovery. The permittee shall take appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutant. Where potential spills can occur, materials, handling procedures and storage shall be specified. The permittee shall identify the procedures for cleaning up

spills and shall make available the necessary equipment to personnel to implement a clean up. The permittee shall store, use, and dispose of all herbicides and pesticides in accordance with label instructions. There shall be no disposal of herbicides, pesticides, solvents or heavy metals, or of spills or residues from storage or application equipment or containers, into RCSs. Incidental amounts of such substances entering a RCS as a result of stormwater transport of properly applied chemicals is not a violation of this permit.

2. Discharge Restrictions and Monitoring Requirements.

(a) Discharge Restrictions. Wastewater may be discharged to waters in the state from a properly designed, constructed, operated and maintained RCS whenever chronic or catastrophic rainfall events, or catastrophic conditions cause an overflow. There shall be no effluent limitations on discharges from RCSs which meet the above criteria.

(b) Monitoring Requirements. The permittee shall sample and analyze all discharges from RCSs for the following parameters:

Parameter	Sample Type	Sample Frequency
BOD ₅	Grab	1/day ¹
Total Coliform	Grab	1/day ¹
Fecal Coliform	Grab	1/day ¹
Total Dissolved Solids (TDS)	Grab	1/day ¹
Total Suspended Solids (TSS)	Grab	1/day ¹
Nitrate (N)	Grab	1/day ¹
Total Phosphorus	Grab	1/day ¹
Ammonia Nitrogen	Grab	1/day ¹
Pesticides ²	Grab	1/day ¹

¹ Sample shall be taken within the first 30 minutes following the initial discharge and then once per day while discharging.

² Any pesticide which the permittee has reason to believe could be present in the wastewater.

(c) If the permittee is unable to collect samples due to climatic conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.), the permittee shall document why discharge samples could not be collected. Once dangerous conditions have passed, the permittee shall conduct the required sampling.

3. RCS Design and Construction

(a) RCS Certifications

- (1) The permittee shall ensure that the design and completed construction of RCS 2 (See Special Provision X.A) is certified by a licensed Texas Professional Engineer prior to use. The certification shall be signed and sealed in accordance with the Texas State Board of Professional Engineers requirements.
- (2) Documentation of liner and capacity certifications must be completed for each RCS prior to use and kept on-site in the PPP. Once construction is complete new capacity certifications will be provided. The table below shows the liner and current capacity certifications that have been provided.

RCS	Construction Date	Liner Certification Date	Capacity Certification Date
RCS 1	1992	2/17/97	12/20/96
RCS 2	Proposed	N/A	N/A
Settling Basin 1	Prior to 2002	2/22/02	N/A
Settling Basin 2	Prior to 2002	12/18/02	N/A
Manure Storage	2004	3/01/04	N/A

- (b) Design and Construction Standards. The permittee shall ensure that each RCS is designed and constructed in accordance with the technical standards developed by the NRCS, American Society of Agricultural Engineers, American Society of Civil Engineers, or American Society of Testing Materials that are in effect at the time of construction. Where site-specific variations are warranted, a licensed Texas Professional Engineer must document these variations and their appropriateness to the design.
- (c) RCS Drainage Area
 - (1) The permittee shall describe in the PPP and implement measures that will be used to minimize entry of uncontaminated runoff into RCSs.
 - (2) The permittee shall maintain the drainage area to minimize ponding or puddling of water outside the RCSs.
- (d) RCS Sizing.
 - (1) The design plan must include documentation describing the sources of information, assumptions and calculations used in determining the appropriate volume capacity and structural features of each RCS, including embankment and liners.
 - (2) Design Rainfall Event. Any RCS system authorized under this individual permit shall be designed and constructed to meet or exceed the margin of safety, equivalent to the volume of runoff and direct precipitation from the 25 year/10 day rainfall event. The design

rainfall event for this CAFO is 12.2 inches.

- (3) Any RCS capacity that is greater than the minimum capacity required by this permit may be allocated to additional sludge storage volume, which will increase the design sludge cleanout interval for the RCS. The new sludge cleanout interval will be identified in the RCS management plan maintained in the PPP, the stage storage tables will accurately reflect the new volumes, and the pond markers will visually identify the new volume levels. Beginning in year 3 and annually thereafter, the sludge accumulation volume will be measured and recorded in the PPP.

(e) **Irrigation Equipment Design.** The permittee shall ensure that the irrigation system design is capable of removing wastewater from the RCSs on a regular schedule. Equipment capable of dewatering the RCSs shall be available and operational whenever needed to restore the operating capacity required by the RCS management plan.

(f) **Embankment Design and Construction.** The RCSs on this CAFO have a depth of water impounded against the embankment at the spillway elevation of three feet or more, therefore the RCSs are considered to be designed with an embankment. The PPP shall include a description of the design specifications for the RCS embankments. The following design specifications are required for new construction of a RCS 2.

- (1) **Soil Requirements.** Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees.
- (2) **Embankment Lifts.** The embankment shall be constructed in lifts or layers no more than eight inches compressed to six inches thick at a minimum compaction effort of 95 percent Standard Proctor Density (ASTM D698) at -1% to +3% of optimum moisture content.
- (3) **Stabilize Embankment Walls.** All embankment walls shall be stabilized to prevent erosion or deterioration.
- (4) **Compaction Testing.** Embankment construction must be accompanied by certified compaction tests including in place density and moisture in accordance with the American Society of Testing Materials (ASTM D 1556, D 2167, D 2922 or D 2937; and D 2216, D 3017, D 4643, D 4944 or D 4959) or equivalent testing standards. Compaction tests will provide support for the liner certification performed by a licensed Texas professional engineer as meeting a permeability equal to, or less than, 1×10^{-7} cm/sec over a thickness of 18 inches or its equivalency in other materials.
- (5) **Spillway or Equivalent Protection.** New RCSs that are constructed with embankments shall be constructed with a spillway or other outflow device properly sized according to NRCS design and specifications to protect from overtopping and to protect the integrity

- of the embankment during chronic or catastrophic rainfall that is greater than the design rainfall event.
- (6) Embankment Protection. New construction of RCS 2 must have a minimum of 2 vertical feet of materials equivalent to those used at the time of design and construction between the top of the embankment and the structure's spillway. All RCSs on this CAFO will have spillways.
 - (g) RCS Hydrologic Connection. The permittee shall ensure site-specific documentation is prepared and certified by a licensed Texas professional engineer or licensed Texas professional geoscientist that shows that no significant hydrologic connection exists between the contained wastewater and water in the state. Where the permittee cannot document that no significant hydrologic connection exists, RCSs must have a liner consistent with the requirements of this subsection.
 - (1) Documentation must show that there will be no significant leakage from the RCS; or that any leakage from the RCS will not migrate to water in the state.
 - (2) If it is claimed that no significant leakage would result from the use of in-situ materials, documentation must be provided by an NRCS engineer, or a licensed Texas professional engineer or a licensed Texas professional geoscientist that a liner is not needed to prevent a significant hydrologic connection between the contained wastewater and waters in the state. This information will be considered documentation that no significant hydrologic connection exists.
 - (3) Site-specific conditions may be considered in the design and construction of liners. Where no site-specific assessment has been performed demonstrating that there will be no significant leakage from the RCS or that any leakage from the RCS will not migrate to water in the state, a liner must be designed by a licensed Texas professional engineer and documented to have hydraulic conductivities no greater than 1×10^{-7} centimeters per second (cm/sec), with a thickness of 1.5 feet or greater or its equivalency in other materials. The liner must be constructed in accordance with the design and certified as such by a licensed Texas professional engineer. The permittee shall maintain the liner to minimize the percolation of wastewater through the liner.
 - (4) Liner Sampling. The licensed Texas professional engineer or licensed Texas professional geoscientist shall use best professional practices to ensure that core samples or other liner samples will be appropriately plugged with material that also meet liner thickness or saturated hydraulic conductivity tested at optimal moisture content standards.
 - (5) Leak Detection System. If notified by the executive director that

significant potential exists for the adverse impact of water in the state or drinking water from leakage of the RCS, the permittee shall install a leak detection system or monitoring well(s) in accordance with that notice. Documentation of compliance with the notification must be kept with the PPP, as well as copies of all sampling data.

4. Special Considerations for Existing RCSs. Existing RCS 1 has been properly maintained without any modifications and has no apparent structural problems or leakage and is considered to be properly designed with respect to the embankment design and construction and hydrologic connection requirements of this permit, provided that any required documentation was completed in accordance with the requirements at the time of construction.

5. Operation and Maintenance of RCS

(a) RCS Operation and Maintenance

(1) The permittee must operate and maintain a margin of safety in the RCS to contain the volume of runoff and direct precipitation from the 25 year/10 day rainfall event.

(2) The permittee shall implement an RCS management plan incorporating the margin of safety developed by a licensed Texas professional engineer (See Special provision X.A.3). The RCS management plan shall become a component of the PPP, shall be developed for the RCS system, and must describe or include:

(i) RCS management controls appropriate for the CAFO and the methods and procedures for implementing such controls;

(ii) the methods and procedures for proper operation and maintenance of the RCS consistent with the system design;

(iii) the appropriateness and priorities of any controls reflecting the identified sources of pollutants at the facility;

(iv) a stage/storage table for each RCS with minimum depth increments of one-foot, including the storage volume provided at each depth;

(v) a second table or sketch that includes increments of water level ranges for volumes of total design storage, including the storage volume provided at each specified depth (or water level) and the type of storage designated by that depth; and

(vi) the planned end of month storage volume anticipated for each RCS for each month of the year and the corresponding operating depth expected at the end of each month of the year, based on the design assumptions.

(3) The wastewater level in each RCS shall be maintained at or below the maximum operating level expected during that month, according to the design of each RCS. When rainfall volumes exceed average rainfall data used in design calculations, stored volumes may encroach into the design storm event storage provided that

- documentation is available to support the occurrence and demonstrate that the RCS is otherwise being managed according to the RCS Management Plan criteria. In circumstances where an RCS has a water level exceeding the expected end of the month depth, the permittee shall document in the PPP why the level of water in the structure is not at or below the expected depth. Also, if the water level in an RCS encroaches into the storage volume reserved for the design rainfall event, the permittee must document, in the PPP, the conditions that resulted in this occurrence. As soon as irrigation is feasible and not prohibited by Section VII.A.8.f. and g., the permittee shall irrigate until the RCS water level is at or below the maximum operating level expected during that month.
- (4) **Imminent Overflow.** If a RCS is in danger of imminent overflow from chronic or catastrophic rainfall or catastrophic conditions, the permittee shall take reasonable steps to irrigate wastewaters to LMUs only to the extent necessary to prevent overflow from the RCS. If irrigation results in a discharge from the LMU, the permittee shall collect samples from the drainage pathway at the point of the discharge from the edge of the LMU where the discharge occurs, analyze the samples for the parameters listed in Section VII. A.2.(b), and provide the appropriate notifications as required by Section VIII.B of this permit and 30 TAC §321.44.
- (5) **Permanent Pond Marker.** The permittee shall install and maintain a permanent pond marker (measuring device) in RCS Numbers 1 & 2, visible from the top of the levee to show the following:
- (i) the volume level for the design rainfall event; and
 - (ii) one-foot increments beginning from the bottom of the RCS to the top of the embankment or spillway.
- (6) **Rain Gauge.** A rain gauge capable of measuring the design rainfall event shall be kept on site and be properly maintained.
- (7) **Sludge Removal.** The permittee shall monitor sludge accumulation and depth in a RCS, as necessary, but not less than annually beginning in year three (3) from the date of this permit, based upon the design sludge storage volume in the RCS. Sludge shall be removed from RCSs in accordance with the design schedule for cleanout in the RCS Management Plan to prevent the accumulation of sludge from exceeding the designed sludge volume of the structure. Removal of sludge shall be conducted during favorable wind conditions that carry odors away from nearby receptors. Sludge may only be beneficially utilized by land application to a Third Party Field if in accordance with Section VII.A.8(e)(5). Alternatively, sludge may be disposed by any of the

following method(s):

- i. delivery to a composting facility authorized by the executive director;
- ii. delivery to a permitted landfill located outside of the major sole source impairment zone, subject to the requirements of commission rules relating to industrial solid waste;
- iii. beneficial use outside of the major sole source impairment zone; or
- iv. put to another beneficial use approved by the executive director.
- v. application of sludge to LMUs provided that the NMP is revised prior to applications.

(8) Liner Protection and Maintenance. The permittee shall maintain RCS liners to inhibit infiltration of wastewater. Liners must be protected from animals by fences or other protective devices. No tree shall be allowed to grow such that the root zone would intrude or compromise the structure of the liner or embankment. Any mechanical or structural damage to the liner shall be evaluated by a licensed Texas professional engineer within thirty (30) days of the damage.

(9) Closure Requirements. A closure plan must be developed when an RCS will no longer be used or when the CAFO ceases or plans to cease operation. The closure plan shall be submitted to the appropriate regional office and the Land Application Team of the Water Quality Division in Austin (MC-148) within ninety (90) days. The closure plan for the RCS must, at a minimum, be developed using standards contained in the NRCS Practice Standard Code 360 (Closures of Waste Impoundments), as amended, and using the guidelines contained in the Texas Cooperative Extension/NRCS publication #B-6122 (Closure of Lagoons and Earthen Manure Storage Structures), as amended. The permittee shall maintain or renew its existing authorization and maintain compliance with the requirements of this permit until the facility has been closed.

6. General Operating Requirements

- (a) Flush/Scrape Systems. Flush/scrape systems shall be flushed/scraped in accordance with design criteria. This provision applies to vacuum tanks used to scrape manure in freestall barns and to dry manure handling systems.
- (b) Pen Maintenance. The permittee shall maintain earthen pens to ensure good drainage, minimize ponding, and minimize the entrance of uncontaminated storm water to the RCSs.
- (c) Carcass Disposal. Carcasses shall be collected within 24 hours of death and properly disposed of within three days of death in accordance with Texas Water Code, Chapter 26; Texas Health and Safety Code, Chapter 361; and 30 TAC Chapter 335 (relating to Industrial Solid Waste and Municipal Hazardous Waste) unless otherwise provided for by the commission. Animals must not be disposed of in any liquid manure or process wastewater

system. Disposal of diseased animals shall also be conducted in a manner that prevents a public health hazard in accordance with Texas Agriculture Code, §161.004, and 4 TAC §§ 31.3 and 58.31(b). The collection area for carcasses shall be addressed in the potential pollutant sources section of the PPP with management practices to prevent contamination of surface or groundwater; control access; and minimize odor.

(d) Manure and Sludge Storage

(1) Manure and sludge storage capacity requirements shall be based on manure and sludge production, land availability, and the NRCS Field Office Technical Guide (Part 651, Chapter 10) or equivalent standards. [See Special Provision X.E. for the storage requirements applicable to slurry collected from freestall barns.]

(2) When manure is stockpiled, it shall be stored in a well-drained area, and the top and sides of stockpiles shall be adequately sloped to ensure proper drainage and prevent ponding of water. Runoff from manure or sludge storage piles must be retained on site. If the manure or sludge areas are not roofed or covered with impermeable material, protected from external rainfall, or bermed to protect from runoff during the design rainfall event, the manure or sludge areas must be located within the drainage area of a RCS and accounted for in the design calculations of the RCS.

(3) Manure or sludge stored for more than 30 days must be stored within the drainage area of a RCS or stored in a manner (i.e. storage shed, bermed area, tarp covered area, etc.) that otherwise prevents contaminated storm water runoff from leaving the storage area. All storage sites and structures located outside the drainage area shall be designated on the site map.

(4) Temporary storage of manure or sludge shall not exceed 30 days and is allowed only in a RCS drainage area. Temporary storage of manure and sludge near water courses or near recharge features is prohibited unless protected by berms or other structures to prevent inundation or damage that may occur.

(e) Composting. Composting on site shall be performed in accordance with 30 TAC Chapter 332 (relating to Composting). The permittee may compost waste generated on site, including manure, litter, bedding, feed, and dead animals. The permittee may add agricultural products to provide an additional carbon source or bulking agent to aid in the composting process. If the compost areas are not roofed or covered with impermeable material, protected from external rainfall, or bermed to protect from runoff in the case of the design rainfall event, the compost areas must be located within the drainage of an RCS and must be shown on the site plan and accounted for in the design calculations of the RCS.

7. Well Protection Requirements.

- (a) The permittee shall not locate or operate a new RCS, holding pen, or LMU within the following buffer zones:
 - (1) public water supply wells - 500 feet;
 - (2) wells used exclusively for private water supply - 150 feet; or
 - (3) wells used exclusively for agriculture irrigation - 100 feet.
- (b) Irrigation of wastewater directly over a well head will require a structure protective of the wellhead that will prevent contact from irrigated wastewater.

The table presented below lists the wells on this CAFO, their current status and the Best Management Practices used to protect groundwater.

Well Number	Status	Best Management Practice
1	Producing	Steel sleeve inside surface slab
2	Producing	Steel sleeve inside surface slab
3	Producing (capped)	Cased, observe 150 foot buffer
4	Abandoned	Plugging report
5	Producing	Cased, observe 150 foot buffer
6	Abandoned	Plugging report
7	Abandoned	Plugging report

- (c) Construction of any new water wells must be done by a licensed water well driller.
- (d) All abandoned and unuseable wells shall be plugged according to 16 TAC § 76.702.
- (e) The permittee may continue the operation and use of any existing holding pens and RCSs located within the required well buffer zones provided they are in accordance with the facility's approved recharge feature evaluation and certification. Buffer zone variance documentation must be kept on-site and made available to TCEQ personnel upon request.

8. Land Application

- (a) Nutrient Management Plan (NMP) Required. The certified NMP dated July 24, 2007 shall be implemented upon issuance of this permit. The plan shall be updated as appropriate or at a minimum of annually according to NRCS guidance for Practice Standard 590. The operator shall make available to the executive director, upon request, a copy of the site-specific NMP and documentation of the implementation.

- (b) Comprehensive Nutrient Management Plan (CNMP) required. The permittee must develop and operate under a CNMP certified by the Texas State Soil and Water Conservation Board. The CNMP must be implemented by December 31 2006.
- (c) Critical Phosphorus Level.
 - (1) When results of the annual soil analysis show a phosphorus level in the soil of more than 200 ppm but not more than 500 ppm in Zone 1 (0 - 6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth for a particular LMU or if ordered by the commission to do so in order to protect the quality of waters in the state, then the permittee shall:
 - (i) file with the executive director a new or amended nutrient utilization plan (NUP) with a phosphorus reduction component based on crop removal that is certified as acceptable by a person described in (3) below; or
 - (ii) show that the level is supported by a NUP that is certified as acceptable by a person described in (3) below.
 - (2) The permittee shall cease land application of manure, sludge, compost and wastewater to the affected area until the NUP has been approved by the TCEQ. After a NUP is approved, the permittee shall land apply in accordance with the NUP until soil phosphorus is reduced below the critical phosphorus level of 200 ppm extractable phosphorus. Thereafter, the permittee shall implement the requirements of the nutrient management plan or may elect to continue operating under the approved NUP for an additional period of time.
 - (3) NUP. A NUP is a NMP, based on NRCS Practice Standard Code 590, which utilizes a crop removal application rate. The NUP, based on crop removal, must be developed and certified by one of the following individuals or entities:
 - (i) an employee of the NRCS;
 - (ii) a nutrient management specialist certified by the NRCS;
 - (iii) the Texas State Soil and Water Conservation Board;
 - (iv) the Texas Cooperative Extension;
 - (v) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas; or
 - (vi) a Certified Professional Agronomist certified by the American Society of Agronomy, a Certified Professional Soil Scientist certified by the Soil Science Society of America, or a licensed Texas professional geoscientist-soil scientist after approval by the executive director based on a determination by the executive director that another person or entity identified in

this paragraph cannot develop the plan in a timely manner.

- (4) When results of the annual soil analysis for extractable phosphorus indicate a level greater than 500 ppm in Zone 1 (0 - 6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth, the permittee shall file with the executive director a new or amended NUP with a phosphorus reduction component, based on crop removal, that is certified as acceptable by a person described in (3) above. After the new or amended NUP is approved, the permittee shall land apply in accordance with the NUP until soil phosphorus is reduced below 500 ppm extractable phosphorus.
 - (5) If the permittee is required to have a NUP with a phosphorus reduction component based on crop removal, and if the results of tests performed on composite soil samples collected 12 months or more after the plan is filed do not show a reduction in phosphorus concentration in Zone 1 (0 - 6 inches if incorporated and 0-2 or 2-6 inch if not incorporated) depth, then the permittee is subject to enforcement action at the discretion of the executive director.
- (d) Buffer Requirements. The permittee shall meet the following buffer requirements for each LMU:
- (1) Water in the state. Vegetative buffers shall be maintained in accordance with NRCS Field Office Technical Guidance. The permittee shall not apply manure sludge compost settling basin solids or wastewater closer than 100 feet to any water in the state. Additionally, the permittee shall install and maintain a filter strip (according to NRCS Code 393) or vegetative barrier (according to NRCS Code 601), between the vegetative buffer and the land application area; and if the land application area is cropland the permittee shall install and maintain contour buffer strips (according to NRCS Code 332) within the land application area in addition to the filter strip or vegetative barrier. See Attachment B for map. See special provision X.F. for specific buffers on each LMU.
 - (2) Water wells. The permittee shall comply with the well protection requirements listed in Section VII.A.7.
- (e) Exported Manure and Sludge: Manure or sludge removed from the operation shall be disposed of by:
- (1) delivery to a composting facility authorized by the executive director;
 - (2) delivery to a permitted landfill located outside of the major sole source impairment zone subject to the requirements of commission rules relating to industrial solid waste;
 - (3) beneficial use by land application to land located outside of the major sole source impairment zone;
 - (4) put to another beneficial use approved by the executive director; or

- (5) providing manure, or sludge, to operators of third-party fields, i.e. areas of land in the major sole source impairment zone not owned, operated, controlled, rented, or leased by the CAFO owner or operator, that have been identified in the PPP.
- (i) There must be a written contract between the permittee and the recipient that includes, but is not limited to, the following provisions:
- (A) All transferred manure or sludge shall be beneficially applied to third-party fields identified in the PPP in accordance with the applicable requirements in 30 TAC § 321.36 and 321.40 at an agronomic rate based on soil test phosphorus. The requirements for development or implementation of a nutrient management plan or nutrient utilization plan, under 30 TAC § 321.40, do not apply to third-party fields.
 - (B) Manure and sludge must be incorporated on cultivated fields within forty-eight (48) hours after land application.
 - (C) Land application rates shall not exceed the crop nitrogen requirement when soil phosphorus concentration in Zone 1 (0 - 6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth is less than or equal to 50 ppm phosphorus.
 - (D) Land application rates shall not exceed two times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentration in Zone 1 (0 - 6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth is greater than 50 ppm phosphorus and less than or equal to 150 ppm phosphorus.
 - (E) Land application rates shall not exceed one times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentration in Zone 1 (0 - 6 inch if incorporated and 0-2 or 2-6 inch if not incorporated) depth is greater than 150 ppm phosphorus and less than or equal to 200 ppm phosphorus.
 - (F) Third-party fields which have had manure; or sludge applied during the preceding year must be sampled within 12 months of any previous application to that field by a certified nutrient management specialist and the samples analyzed in accordance with 30 TAC § 321.36.

- (G) A copy of the annual soil analyses shall be provided to the permittee within 60 days of the date the samples were taken.
- (H) Temporary storage of manure or sludge is prohibited on third party fields.
 - (ii) The permittee is prohibited from delivering manure or, sludge to an operator of a third-party field once the soil test phosphorus analysis shows a level equal to or greater than 200 ppm or after becoming aware that the third-party operator is not following appropriate provisions of 30 TAC §§ 321.36, 321.40 and/or the contract.
 - (iii) The permittee will be subject to enforcement action for violations of the land application requirements on any third-party field under contract.
 - (iv) The permittee shall submit records to the appropriate regional office quarterly that contain the name, locations, and amounts of manure and sludge transferred to operators of third-party fields.
 - (v) No wastewater may be applied to third party fields
- (f) Irrigation Operating Requirements
 - (1) Minimize Ponding. Irrigation practices shall be managed so as to minimize ponding or puddling of wastewater on the site, prevent tailwater discharges to waters in the state, and prevent the occurrence of nuisance conditions.
 - (2) Discharge Prohibited.
 - (i) The drainage of manure sludge or irrigated wastewater is prohibited from a LMU, unless authorized under Section VII.A.5.(a)(4).
 - (ii) Where manure, sludge, or wastewater is applied in accordance with the nutrient management plan, and or NUP, precipitation-related runoff from LMUs under the control of the permittee is authorized.
 - (iii) If a discharge from the irrigation system is documented as a violation, the permittee may be required by the executive director to install an automatic emergency shut-down or alarm system to notify the permittee of system problems.
 - (3) Backflow Prevention. If the permittee introduces wastewater or chemicals to water well heads for the purpose of irrigation, then backflow prevention devices shall be installed according to 16 TAC Chapter 76 (related to Water Well Drillers and Water Well Pump Installers).
- (g) Nighttime Application.
 - (1) Land application at night shall only be allowed if there is no occupied

residence(s) within 0.25 mile from the outer boundary of the actual area receiving manure, sludge, or wastewater application. In areas with an occupied residence within 0.25 mile from the outer boundary of the actual area receiving manure, sludge, or wastewater application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current occupant of such residences have, in writing, agreed to specified nighttime applications.

- (2) Land application of manure, sludge, or wastewater is prohibited between 12a.m. and 4a.m.

9. Sampling and Testing.

- (a) Manure and Wastewater. The permittee shall collect and analyze at least one representative sample of wastewater and one representative sample of manure (solids, settling basin solids, slurry, compost and others as appropriate) each year for total nitrogen, total phosphorus, and total potassium. The results of these analyses shall be used in determining application rates.

- (b) Soils.

- (1) Initial Sampling. Before commencing manure, sludge or wastewater application to LMUs or third-party fields, the permittee shall have at least one representative soil sample from each of the LMUs or third-party fields collected and analyzed according to the following procedures. The permittee is not required to collect soil samples on LMUs where manure, sludge, or wastewater has not been applied during the preceding year. The permittee must comply with the initial sampling requirement before resuming land application to such LMUs.
- (2) Annual Sampling. The permittee shall have soil samples collected annually for each current and historical LMU.
- (3) Sampling Procedures. Sampling procedures shall employ accepted techniques of soil science for obtaining representative samples and analytical results, and be consistent with approved methods described in the executive director's guidance entitled "Soil Sampling for Nutrient Utilization Plans (RG-408)."
 - (i) Soil samples must be collected by one of the following persons:
 - (A) the NRCS;
 - (B) a certified nutrient management specialist;
 - (C) the Texas State Soil and Water Conservation Board;
 - (D) the Texas Cooperative Extension; or
 - (E) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas.
 - (ii) Samples shall be collected and analyzed within the same forty-five (45) day time frame each year, except when crop rotations or inclement weather require a change in the

sampling time. The reason for a change in sampling timeframes shall be documented in the PPP.

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

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

(A) Zone 1: zero (0) to six (6) inches (for an LMU where the manure, and sludge, is physically incorporated or injected directly into the soil) or zero (0) to two (2) inches (for an LMU where the manure, and sludge is not incorporated into the soil). Wastewater is considered to be incorporated upon land application if it is less than two percent (2%) solids. Slurry from freestall barns is treated like manure for this sampling requirement. If a zero (0) to two (2) inch sample is required, then an additional sample from the two (2) to six (6) inch soil depth zone shall be obtained in accordance with the provisions of this section; and

(B) Zone 2: six (6) to twenty-four 24 inches.

(4) Laboratory Analysis. Samples shall be analyzed by a soil testing laboratory. Physical and chemical parameters and analytical procedures for laboratory analysis of soil samples from LMUs shall include the following:

- (i) nitrate reported as nitrogen in ppm;
- (ii) phosphorus (extractable, ppm) using Mehlich III with Inductively Coupled Plasma (ICP);
- (iii) potassium (extractable, ppm);
- (iv) sodium (extractable, ppm);
- (v) magnesium (extractable, ppm);
- (vi) calcium (extractable, ppm);
- (vii) soluble salts (ppm) or electrical conductivity (dS/m) - determined from extract of 2:1 (v/v) water/soil mixture; and
- (viii) soil water pH (soil:water, 1:2 ratio).

10. Preventative Maintenance Program.

(a) Facility Inspections

(1) General Requirements

- (i) Inspections shall include visual inspections and equipment testing to determine conditions that could cause breakdowns or failures resulting in discharge of pollutants to water in the state or the creation of a nuisance condition.
- (ii) The permittee shall draft a report, to be maintained in the

- PPP, to document the date of inspections, observations and actions taken in response to deficiencies identified during the inspection. The permittee shall correct all the deficiencies within thirty (30) days or shall document the factors preventing immediate correction.
- (2) Daily Inspections. The permittee shall conduct daily inspections on all water lines, including drinking water and cooling water lines, which are located within the drainage area of a RCS.
 - (3) Weekly Inspections. The permittee shall conduct weekly inspections on:
 - (i) all control facilities, including all RCSs, storm water diversion devices, runoff diversion structures, control devices for management of potential pollutant sources, and devices channeling contaminated storm water to each RCS; and
 - (ii) equipment used for land application of manure, sludge, or wastewater.
 - (4) Monthly Inspections. The permittee shall conduct monthly inspections on:
 - (i) mortality management systems, including collection areas; and
 - (ii) disposal and storage of toxic pollutants, including pesticide containers.
 - (5) Annual Site Inspection.
 - (i) The permittee shall annually conduct a complete site inspection of the production area and LMUs and shall document the findings, including any significant observations requiring further action in the PPP.
 - (ii) The inspection shall verify that:
 - (A) the description of potential pollutant sources is accurate;
 - (B) the site plan/map has been updated or otherwise modified to reflect current conditions;
 - (C) the controls outlined in the PPP to reduce pollutants and avoid nuisance conditions are being implemented and are adequate; and
 - (D) records documenting significant observations made during the site inspection.
- (b) Five Year Evaluation. Once every five years the permittee shall have a licensed Texas professional engineer review the existing engineering documentation, complete a site evaluation of the structural controls, review existing liner and RCS capacity documentation, and complete and certify a report of their findings. The report must be kept in the PPP.
11. Management Documentation. The permittee shall maintain the following records in

the PPP:

- (a) a copy of the administratively complete and technically complete individual water quality permit application and the written authorization issued by the commission or executive director;
- (b) a copy of the approved recharge feature certification;
- (c) a copy of the comprehensive nutrient management plan, nutrient management plan and nutrient utilization plan (if required);
- (d) the RCS liner certifications;
- (e) any written agreement with a landowner which documents the allowance of nighttime application of manure, sludge, or wastewater;
- (f) documentation of employee and operator training, including verification of the date, time of attendance, and completion of training;
- (g) the RCS management plan
- (h) any measurements of sludge in the RCSs
- (i) the capacity of each RCS, as certified by a licensed Texas professional engineer; and
- (j) a copy of all third-party field contracts.

B. General Requirements

1. The permittee shall not construct any component of the production area in any stream, river, lake, wetland, or playa (except as defined by and in accordance with the Texas Water Code § 26.048).
2. Animals confined on the CAFO shall be restricted from coming into direct contact with surface water in the state through the use of fences or other controls.
3. The permittee shall prevent the discharge of pesticide and herbicide contaminated waters into surface water in the state. All wastes from dipping vats, pest and parasite control units, and other facilities used for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner that prevents any significant pollutants from entering water in the state or creating a nuisance condition.
4. The permittee shall operate the CAFO in such a manner as to prevent nuisance conditions of air pollution as mandated by Texas Health and Safety Code, Chapters 341 and 382.
5. The permittee shall take reasonable steps necessary to prevent adverse effects to human health or safety, or to the environment.
6. The permittee shall maintain control of the RCSs, required LMUs, and control facilities identified on the site map submitted in the application. In the event the permittee loses control of any of these areas, the permittee shall notify the executive director within five (5) working days.
7. If animals are maintained in pastures, the permittee shall maintain crops, vegetation, forage growth, or postharvest residues in those pastures during the normal growing season, excluding the feed and/or water trough areas and open lots designated on the site map. If animals are maintained on the LMUs of this CAFO the NMP shall be

modified to reflect grazing.

C. Training

1. Employee Training
 - (a) CAFO employees who are responsible for work activities relating to compliance with provisions of this permit must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and land application of manure, sludge or wastewater.
 - (b) Employee training shall address all levels of responsibility of the general components and goals of the PPP. Training shall include appropriate topics, such as land application of manure, sludge, or wastewater, proper operation and maintenance of the facility, good housekeeping, material management practices, recordkeeping requirements, and spill response and clean up.
 - (c) The permittee is responsible for determining the appropriate training frequency for different levels of personnel. The PPP shall identify periodic dates for such training.
2. Operator Training. The operator shall attend and complete at least 8 hours of continuing education in animal waste management or its equivalent, developed by the executive director and the Texas Cooperative Extension, for each two year period.
3. Verification of the date and time(s) of attendance and completion of required training shall be documented in the PPP.

VIII. Recordkeeping, Reporting, and Notification Requirements

- A. **Recordkeeping.** The permittee shall keep records on site for a minimum of five years from the date the record was created and shall submit them within five days of a written request by the executive director.
 1. The permittee shall update records daily to include:
 - (a) all measurable rainfall events; and
 - (b) the wastewater levels in the RCSs, as shown on the depth marker. In circumstances where an RCS has a water level exceeding the expected end of the month depth, the permittee shall document in the PPP why the level of water in the structure is not at or below the expected depth.
 2. The permittee shall update records weekly to include:
 - (a) records of all manure, sludge, or wastewater removed from the CAFO that shows the dates, amount, and recipient. The permittee must make the most recent nutrient analysis available to any hauler; and
 - (b) inspections of control facilities and land application equipment.
 3. The permittee shall update records monthly to include:
 - (a) records describing mortality management practices;
 - (b) storage and disposal of chemicals, including pesticide containers; and
 - (c) records of all manure, sludge, or wastewater applied on LMUs. Such records

must include the following information:

- (i) date of manure, sludge, or wastewater application to each LMU;
 - (ii) location of the specific LMU and the volume applied during each application event;
 - (iii) acreage on which manure, sludge, or wastewater is applied for each individual crop;
 - (iv) total amount of nitrogen and phosphorus applied per acre to each LMU on a dry basis, including sources of nutrients other than manure, sludge, or wastewater; and the basis for such calculation; and
 - (v) weather conditions, such as temperature, precipitation, and cloud cover, during the land application and twenty-four (24) hours before and after the land application; and
4. The permittee shall update records annually to include:
 - (a) actual annual yield of each harvested crop for each LMU
 - (b) percent moisture content of the manure and wastewater
 - (c) annual nutrient analysis for at least one representative sample of irrigation wastewater and one representative sample of manure (solid and slurry) for total nitrogen, total phosphorus, and total potassium;
 - (d) Any initial and annual soil analysis report;
 - (e) the annual site inspection report; and
 - (f) any measurements of sludge accumulation in all of the RCSs including but not limited to the requirements in VII.A5(a)(7)
 5. The Five Year Evaluation report must be updated every five years.
 6. The permittee shall keep the following records on-site:
 - (a) a list of any significant spills of potential pollutants at the CAFO that have a significant potential to reach water in the state;
 - (b) documentation of liner maintenance by an NRCS engineer, a licensed Texas professional engineer or a licensed Texas professional geoscientist;
 - (c) RCS design and as built capacity certification;
 - (d) embankment certification;
 - (e) liner certification;
 - (f) a copy of current and amended site plans; and
 - (g) copies of all notifications to the executive director, including any made to a regional office.

B. Reporting and Notifications

1. The permittee shall provide written notice to the appropriate TCEQ regional office as soon as the RCS cleaning is scheduled, but not less than ten days before cleaning. The permittee shall also provide written verification of completion to the same regional office within five days after the cleaning has been completed. This paragraph does not apply to cleaning of solid separators or settling basins that are functioning as solid separators.
2. The permittee shall notify the appropriate TCEQ regional office in writing or by

- electronic mail with the date, time, and location at least ten working days before collecting soil samples from current and historical LMUs; and third party fields.
3. Discharge notification. If for any reason there is a discharge of manure, sludge, or wastewater into water in the state, the permittee shall notify the appropriate TCEQ regional office orally within one (1) hour following discovery of the discharge not to exceed twenty-four (24) hours from when the discharge occurred. The permittee shall also submit written notice, within fourteen (14) working days of the discharge to the Office of Compliance and Enforcement, Enforcement Division (MC 224). In addition, the permittee shall document the following information, keep the information on site, and submit the information to the appropriate regional office within fourteen (14) working days of becoming aware of such discharge. The written notification must include:
 - (a) A description and cause of the discharge, including a description of the flow path to the receiving water body and an estimation of the volume discharged.
 - (b) The period of discharge, including exact dates and times, and, if not corrected, the anticipated time the discharge is expected to continue, and steps being taken to reduce, eliminate and prevent recurrence of the discharge.
 - (c) If caused by a precipitation event(s), the date(s) of the event(s) and the rainfall amount(s) recorded from an on-site rain gauge.
 - (d) Discharge monitoring analyses required by this permit.
 4. In the event of a discharge from a RCS or a LMU during a chronic or catastrophic rainfall event or resulting from catastrophic conditions, the permittee shall orally notify the appropriate TCEQ regional office within one hour of the discovery of the discharge. The permittee shall send written notification to the appropriate regional office within 14 working days.
 5. Chronic Rainfall Discharge. In the event of a discharge of manure, sludge, or wastewater from an RCS or LMU, the permittee shall submit a report to the appropriate TCEQ regional office showing the CAFO records that substantiates that the overflow was a result of cumulative rainfall that exceeded the design rainfall event without the opportunity for dewatering, and was beyond the control of the permittee. After review of the report, if required by the executive director, the permittee shall have an engineering evaluation by a licensed Texas professional engineer developed and submitted to the executive director. This requirement is in addition to the discharge notification requirement in this permit.
 6. Impacts to Human Health or Safety, or the Environment. The permittee shall provide the following noncompliance notifications:
 - (a) Any noncompliance which may endanger human health or safety, or the environment shall be reported by the permittee to the TCEQ. Report of such information shall be provided orally or by e-mail or electronic facsimile transmission (FAX) to the TCEQ regional office within twenty-four (24) hours of becoming aware of the noncompliance. A written submission of such information shall also be provided by the permittee to the TCEQ

regional office and the Enforcement Division (MC 224) within five days of becoming aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times. If the noncompliance has not been corrected, the anticipated time it is expected to continue, and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance and to mitigate its adverse effects.

- (b) In the event the permittee discharges manure, sludge, or wastewater other than as authorized in the permit, the permittee shall give twenty-four (24) hour oral, e-mail or fax notice and five (5) day written notice to TCEQ as required by paragraph (a) above.

7. The permittee shall submit an annual report to the appropriate regional office and the Enforcement Division (MC 224) by February 15 of each year for the reporting period of January 1 to December 31 of the previous year. The report shall be submitted on forms prescribed by the executive director to include, but not limited to:

- (a) number and type of animals, whether in open confinement or housed under roof;
- (b) estimated total manure, sludge and wastewater generated during the reporting period;
- (c) total manure sludge and wastewater land applied during the last 12 months on-site at the CAFO facility;
- (d) total manure and sludge transferred to other persons during the reporting period;
- (e) total number of acres for land application under the control of the permittee, and all 3rd party acreage;
- (f) summary of discharges of manure, sludge or wastewater from the production area that occurred during the reporting period including dates, times, and approximate volume;
- (g) a statement indicating that the CNMP/NMP/NUP, under which the CAFO is operating, was developed and approved by a certified nutrient management specialist;
- (h) a copy of the initial soil analysis for each LMU, regardless of whether manure, sludge, or wastewater has been applied;
- (i) soil monitoring reports of all soil samples collected in accordance with the requirements of this permit;
- (j) groundwater monitoring reports (if applicable); and
- (k) any other information requested by the executive director.

8. The permittee shall furnish to the appropriate regional office, the Enforcement Division (MC 224), and the Water Quality Assessment Team (MC 150) soil testing analysis of all soil samples within 60 days of the date the samples were taken in accordance with the requirements of this permit.

IX. Standard Permit Conditions

- A. The permittee has a duty to comply with all permit conditions. Failure to comply with any permit condition is a violation of the permit and statutes under which it was issued and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application or an application for a permit for another facility.
- B. The permittee must apply for an amendment or renewal before the expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity terminates upon the effective denial of said permit.
- C. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity to maintain compliance with the permit conditions.
- D. The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal or other permit violation which has a reasonable likelihood of adversely affecting human health or the environment.
- E. The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) installed or used by the permittee to achieve compliance with the permit conditions. Proper operation and maintenance also includes adequate laboratory and process controls, and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.
- F. The permittee shall furnish any information, at the request of the Executive Director, that is necessary to determine whether cause exists for revoking, suspending, or terminating authorization under this permit. The requested information must be provided within a reasonable time frame and in no case later than 30 days from the date of the request.
- G. The permittee shall give notice to the Executive Director before physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.
- H. Authorization from the commission is required before beginning any change in the permitted facility or activity that would result in noncompliance with other permit requirements.
- I. Inspection and entry shall be allowed under Texas Water Code, Chapters 26-28, Health and Safety Code, §§361.032-361.033 and §361.037, and 40 Code of Federal Regulations (CFR) §122.41(I). The statement in Texas Water Code, §26.014 that the commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during inspection.
- J. Standard monitoring requirements
1. Samples required by this permit shall be collected and measurements shall be taken at times and in a manner so as to be representative of the monitored discharge or activity. Samples shall be delivered to the laboratory immediately upon collection, in accordance with any applicable analytical method and required maximum holding time. Unless otherwise specified in this permit, test procedures for the analysis of pollutants shall comply with procedures specified in 30 TAC §§319.11 - 319.12. Measurements, tests and calculations shall be accurately accomplished in a representative manner.
 2. Records of monitoring activities must include:
 - (a) the date, time, and place of sample or measurement;
 - (b) the identity of any individual who collected the sample or made the measurement;
 - (c) the chain-of-custody procedures used to maintain sample integrity from sample collection to laboratory delivery;
 - (d) the date and time of laboratory analysis;
 - (e) the identity of the individual and laboratory who performed the analysis;
 - (f) the technique or method of analysis; and
 - (g) the results of the analysis or measurement and quality assurance/quality control records.
 3. The permittee shall ensure that properly trained and authorized personnel monitor and sample the soil or wastewater related to any permitted activity.
- K. Any noncompliance other than that specified in this section, or any required information not submitted or

submitted incorrectly shall be reported to the executive director as promptly as possible.

- L. A permit may be transferred only according to the provisions of 30 TAC §305.64 (relating to Transfer of Permits) and 30 TAC §305.97 (relating to Action on Application for Transfer).
- M. PPPs, reports, and other information requested or required by the Executive Director shall be signed in accordance with the requirements of 30 TAC §305.128 (relating to Signatories to Reports).
- N. A permit may be amended, suspended and re-issued, or revoked for cause. The filing of a request by the permittee for a permit amendment, suspension and re-issuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.
- O. A permit does not convey any property rights of any sort or any exclusive privilege.
- P. Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days following each schedule date.
- Q. If the permittee becomes aware that he/she failed to submit any relevant facts in a permit application, or submitted incorrect information in an application, or in any report to the executive director, the permittee shall promptly submit such facts or information.
- R. The permittee is subject to administrative, civil, and criminal penalties, as applicable, under Texas Water Code, §§26.136, 26.212, and 26.213, for violations including but not limited to the following:
1. negligently or knowingly violating Clean Water Act (CWA) §§301, 302, 306, 307, 308, 318, or 405 or any condition or limitation implementing any sections in a permit issued under CWA §402, or any requirement imposed in a pretreatment program approved under CWA §402(a)(3) or §402(b)(8);
 2. falsifying, tampering with, or knowingly rendering inaccurate any monitoring device or method required to be maintained under a permit; or
 3. knowingly making any false statement, representation, or certification in any record or other document submitted or required to be maintained under a permit, including monitoring reports or reports of compliance or noncompliance.
- S. The permittee shall comply with all applicable rules and regulations of the commission, including 30 TAC 321, Subchapter B.
- T. This permit is granted on the basis of the information supplied and representations made by the permittee during action on an application, and relying upon the accuracy and completeness of that information and those representations. After notice and opportunity for a hearing, this permit may be modified, suspended, or revoked, in whole or in part, in accordance with 30 TAC Chapter 305, Subchapter D, during its term for good cause including, but not limited to, the following:
1. Violation of any terms or conditions of this permit;
 2. Obtaining this permit by misrepresentation or failure to disclose fully all relevant facts; or
 3. A change in any condition that requires either a temporary or permanent reduction or elimination of the authorized discharge.
- U. Acceptance of the permit by the person to whom it is issued constitutes acknowledgment and agreement that such person will comply with all the terms and conditions embodied in the permit, and the rules and other orders of the Commission.
- V. In accordance with the Texas Water Code § 26.029(b), after a public hearing, notice of which shall be given to the permittee, the Commission may require the permittee, from time to time, for good cause, in accordance with applicable laws, to conform to new or additional conditions.
- W. The conditions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstances, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.
- X. Notice of Bankruptcy.
1. Each permittee shall notify the executive director, in writing, immediately following the filing of a voluntary or involuntary petition for bankruptcy under any chapter of Title 11 (Bankruptcy) of the United States Code (11 USC) by or against:
 - (a) the permittee;
 - (b) an entity (as that term is defined in 11 USC, §101(14)) controlling the permittee or listing the permit or permittee as property of the estate; or

- (c) an affiliate (as that term is defined in 11 USC, §101(2)) of the permittee.
- 2. This notification must indicate:
 - (a) the name of the permittee;
 - (b) the permit number(s);
 - (c) the bankruptcy court in which the petition for bankruptcy was filed; and
 - (d) the date of filing of the petition.

X. Special Provisions

A. RCS Construction.

- 1. The permittee shall construct RCS.2 to meet the total required capacity as listed on page 1 of this permit. Design and construction shall comply with Section VII.A.3 of this permit.

Minimum Volume Allocations for RCSs (Acre-feet)

RCS	Design Rainfall Event	Process Generated Wastewater	Minimum Treatment Volume	Sludge Accumulation	Water Balance	Required Capacity (without freeboard)	Actual Capacity (without freeboard)
RCS 1	0	2.76	N/A	2.84	0.00	5.60	13.68
RCS 2	15.09	0	N/A	1.21	4.19	20.49	Proposed 22.0

2. Compliance Schedule.

- (a.) All RCS construction required by this permit shall be completed within 180 days after the issuance date of this permit and prior to exceeding 690 head. Upon written request to the TCEQ Regional Office, the Executive Director may grant an extension to the 180 day requirement. However, all construction must be completed prior to exceeding 690 head.
- (b.) The conversion of LMUs 2&3 to permanent grass (Tifton Bermudagrass) will be completed within 12 months of the issuance of the permit. The conversion of LMUs 4&5 to permanent grass (Tifton Bermudagrass) will be completed within 36 months of the issuance of the permit. Upon written request to the TCEQ Regional Office, the executive Director may grant an extension to these requirements if warranted due to climatic conditions prohibiting establishment of permanent grasses.
- 3. Once construction of RCS 2 is completed, an RCS management plan will be developed to reflect the new volumes and implemented within thirty (30) days.

B. Future Revisions to Bosque River Total Maximum Daily Load (TMDL). The permittee is hereby placed on notice that this permit may be amended by the Texas Commission on Environmental Quality in order to make the terms and conditions of this permit consistent

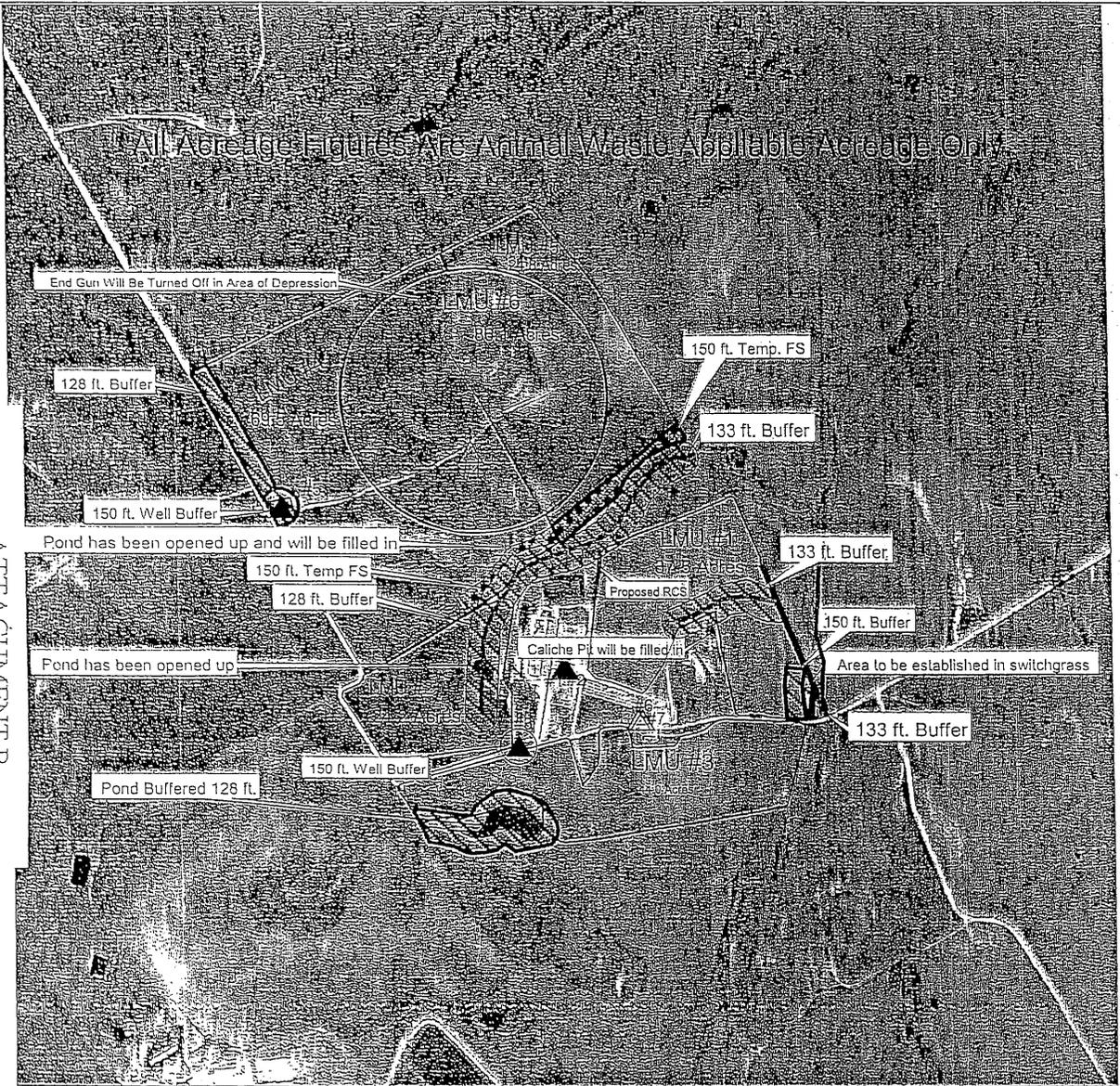
with any revisions to the Bosque River TMDL, associated Implementation Plan, and with any revisions to federal regulations.

- C. The permittee shall submit the following records to the TCEQ Regional Office and the Enforcement Division (MC-224) annually, in conjunction with the annual report required by Section VIII.B.7 of this permit:
1. date of manure, sludge, or wastewater application to each LMU;
 2. location of the specific LMU and the volume applied during each application event;
 3. acreage of each individual crop on which manure, sludge, or wastewater is applied;
 4. basis for and the total amount of nitrogen and phosphorus applied per acre to each LMU, including sources of nutrients other than manure, wastewater or sludge and on a dry basis;
 5. weather conditions, such as temperature, precipitation, and cloud cover, during the land application and 24 hours before and after the land application; and
 6. annual nutrient analysis for at least one representative sample of irrigation wastewater and one representative sample of manure (and sludge if land applied) for total nitrogen, total phosphorus, and total potassium.
 7. any measurements of sludge accumulations as required in each RCS.
- D. Manure includes slurry from freestall barns, solids from open lots, settling basin solids, bedding, compost, feed, and other raw materials commingled with feces and/or urine. If slurry, compost or settling basin solids are being land applied an annual sample analysis must be provided along with analysis for other manure solids and wastewater.
- E. Storage of slurry removed from freestall barns must be stored within the drainage area of an RCS, and the storage area must be large enough to prevent overflow into settling basins and/or RCSs. Any overflow of these storage basins shall be recorded in the PPP and notification shall be provided to the regional office within 30 days. Based on review of the information this permit may be formally amended to require additional controls or other requirements.
- F. The table below describes the buffers that the permittee is required to install and maintain according to the NRCS practice standards in the referenced code. The map in Attachment B specifically describes the location and distance requirements for all buffers. Changes in land use can result in changes in buffer requirements. All buffers in LMUs will be completed and compliant with NRCS Code standards upon issuance of this permit. No application of manure sludge or wastewater can take place on an LMU unless buffer requirements are met. The additional temporary filter strips were designed as part of the CNMP for this CAFO. They provide protection during the transition from cropland to permanent grass on the respective LMUs without having to use contour buffer strips within the cropland LMUs. No application of manure sludge, or wastewater can take place on an LMU unless buffer requirements are met.

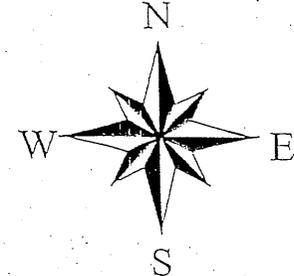
LMU #	Land Use	Vegetative buffer setback (feet)	NRCS Code 393 Filter Strip flow length (feet)	NRCS Conservation Plan Additional Temporary Filter Strips (feet)*
1	Tifton	150	33	0
2	Tifton	100	33	0
3	Tifton	100	28	0
4	Triticale	100	28	150
5	Triticale	100	33	150
6	Native Grass	100	0	0

* additional temporary filter strips include the NRCS Code 393 filter strips. (133 to 150 feet total).

- G. There will be no grazing of livestock on the LMUs for this CAFO unless the NMP is modified to reflect grazing.
- H. The sludge volume in the RCSs shall be measured and recorded in the PPP at least annually beginning in year 3 of the permit.
- I. All runoff from silage storage outside the RCS drainage area will be contained. Appropriate provisions for that containment will be stated in the PPP upon issuance of the permit. This permit does not authorize any discharge from the silage storage area located outside the drainage area of the RCSs.
- J. Once construction of RCS 2 is completed, updated capacity certification for RCS 2 will be placed in the PPP within 30 days. The capacity certification for RCS 1 dated, December 20, 1996, must be recertified with 30 days of the completion of the construction of RCS 2 and placed in the PPP.



All Acreage Figures Are Animal Waste Applicable Acreage Only



1. Pivot does not reach county road ditches.
2. Only solid applications will be done near county roads.
3. Terrain of land, contours, and burms prevent runoff into county road ditches that are not buffered.
4. End gun will be turned off on north side of pivot in location of depression.
5. No animal wastes will be applied to temporary filter strips until attached LMUs are established in permanent grass.
6. Solid animal waste application only in LMU 3.
7. Permanent filter strip distances will continue to be observed after temporary filter strips are no longer needed.

Intermittent Waterway
 Temp FS = Temporary Filter Strip
 Perm. FS = Permanent Filter Strip
 Producing Well
 Plugged Well
 Buffered Well

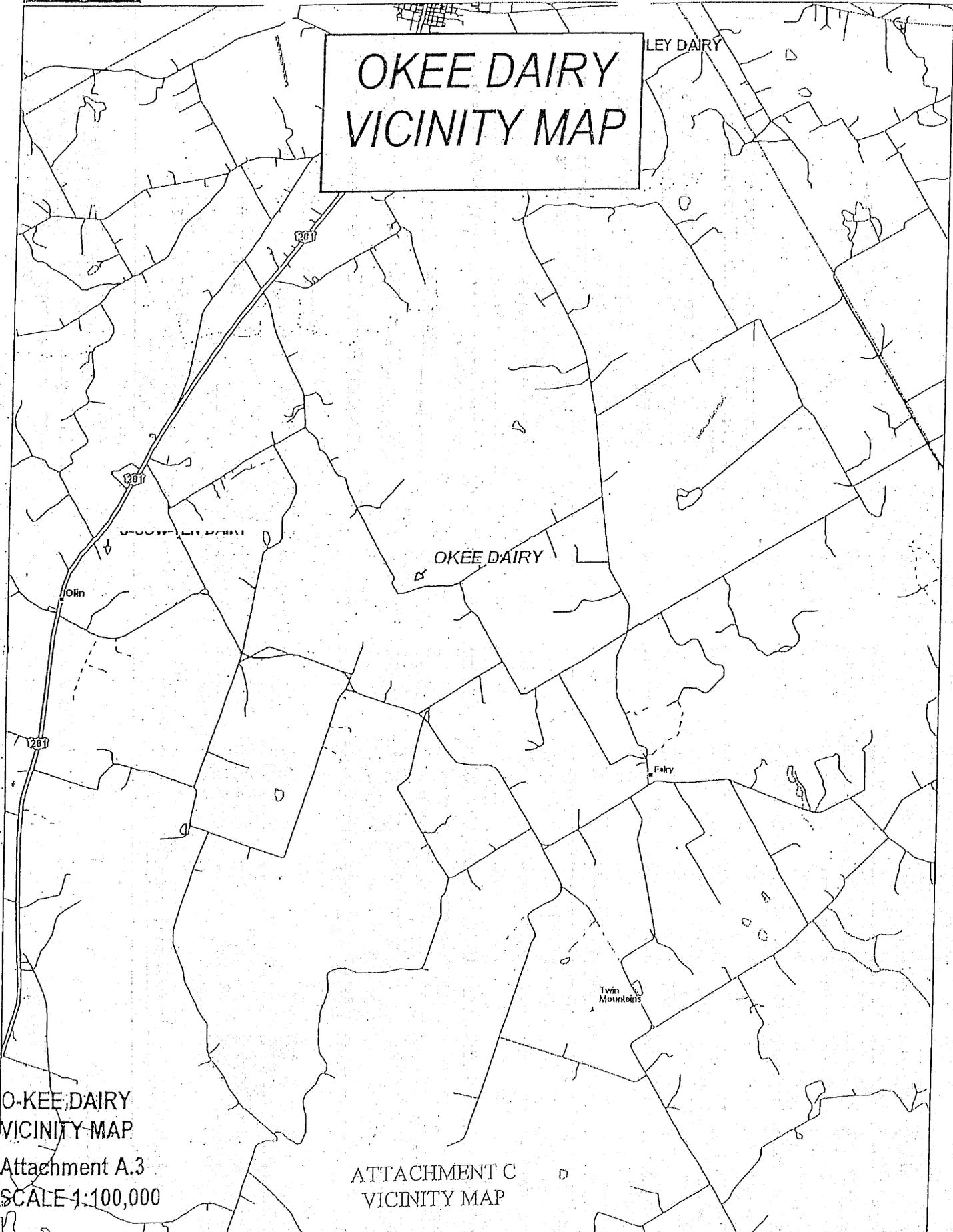


Okee Dairy
Hico
Hamilton County, Texas

LMU Map

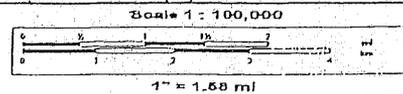
EAE Enviro-Ag Engineering, Inc.
ENGINEERING CONSULTANTS
702 Quail Creek Drive
Amarillo TX 79124
806/353-6123; FAX 806/353-4132

OKEE DAIRY VICINITY MAP



O-KEE DAIRY
VICINITY MAP
Attachment A.3
SCALE 1:100,000

ATTACHMENT C
VICINITY MAP



ATTACHMENT D

TPDES PERMIT NO. WQ0004108000

2007 AUG -9 PM 4: 06

APPLICATION BY	§	BEFORE THE	CHIEF CLERKS OFFICE
JEWEL ALT AND OENE	§	TEXAS COMMISSION ON	
KEUNING, DBA O-KEE	§	ENVIRONMENTAL QUALITY	
DAIRY	§		

EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Public Comment on the preliminary decision by the ED to approve the application of Jewel Alt and Oene Keuning, dba O-Kee Dairy (Applicant) for a major amendment of its existing Concentrated Animal Feeding Operation (CAFO) Texas Pollutant Discharge Elimination System (TPDES) permit no. WQ0004108000. As required by Title 30 of the Texas Administrative Code (30 TAC) Section (§) 55.156, before a permit is issued, the ED prepares a response to all timely, relevant and material, or significant comments. The Office of the Chief Clerk received timely public comments from the City of Waco, represented by Brown McCarroll L.L.P. (Waco), Lonnie and Kaye Lewis, and Dr. Lake Lewis. The Office of the Chief Clerk also received timely public comment in support of the issuing the major amendment to this permit from John Cowan, the Texas Association of Dairies, the Dairy Farmers of America, and Mac Rickels.

This response addresses all such timely public comments received, whether or not withdrawn. If you need more information about this permit application or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. General information about the TCEQ can be found at our website at www.tceq.state.tx.us.

BACKGROUND

Description of Facility

The Applicant has applied for a major amendment to their CAFO individual permit that would allow it to expand its dairy head capacity from 690 to 999 total head. The facility consists of two retention control structures (RCSs) and six land management units (LMUs). The facility is located at 4745 County Road 207 Hico, Texas 76457 in Hamilton County, Texas. The facility is located in the drainage area of the North Bosque River in Segment No. 1226 of the Brazos River Basin.

Procedural Background

The permit application was received on January 24, 2006 and declared administratively complete on September 14, 2006. The Notice of Receipt and Intent to Obtain a Water Quality

Permit was published in the *Hamilton Herald-News* on September 28, 2006. TCEQ staff completed a technical review of the application and prepared a draft permit. The Notice of Application and Preliminary Decision for a Water Quality Permit was published in the *Hamilton Herald-News* on January 4, 2007. A public meeting on the permit application was held on April 19, 2007 and the comment period ended at the conclusion of the meeting. This application is subject to House Bill 801, 76th Legislature, 1999.

COMMENTS AND RESPONSES

Comment 1:

Waco comments that the expansion of this facility constitutes a "new source" under federal law and state law effectively forbids TCEQ from issuing a permit to a new source absent a showing that the conditions of the permit ensure compliance with state water quality standards.

Response 1:

40 Code of Federal Regulations (CFR) § 122.4(a) and (d) prohibit issuing a permit if the conditions of the permit do not provide for compliance with the Clean Water Act (CWA) and when the imposition of conditions cannot insure compliance with the applicable water quality requirements. 40 CFR § 122.4(i) also prohibits issuance of a permit to a "new source" if the discharge from its construction or operation will cause or contribute to the violation of water quality standards. The ED does not find that the draft permit violates these provisions.

"New source" is defined in the federal rules at 40 CFR § 122.2. The definition states that a "new source" is:

Any building structure, facility, or installation from which there is or may be a discharge of pollutants, the construction of which commenced: (A) after promulgation of standards of performance under CWA, § 306, or (B) after proposal of standards of performance in accordance with CWA, § 306, which are applicable to such source, but only if the standards are promulgated in accordance with § 306 within 120 days of their proposal.

According to 40 CFR § 122.29(b), an applicant is a "new source" if it meets the above definition and meets the following criteria:

- (i) It is constructed at a site where no other source is located;
- (ii) It totally replaces the process or production equipment that causes the discharge of pollutants at an existing source; or
- (iii) Its processes are substantially independent of an existing source at the same site (In making this determination, factors to consider include to the extent the new facility is integrated with the existing facility and to the extent the new facility is engaged in the same general activity as the existing source).

The Applicant is applying for an expansion of an existing dairy and the expansion will be constructed at a site where a source is already located. Also, the Applicant does not seek to replace the existing process. The dairy expansion would be integrated with the existing facility.

In the preamble to the EPA's federal CAFO rules, EPA responded to comments that sought to have expanding facilities be treated as "new sources" by stating that was not what they were proposing. EPA cited a scenario very similar to the one presented in this permit application as an example of what was *not* a new source:

For example, a facility that expands its operations by simply extending existing housing structures by constructing new housing adjacent to existing housing is not typically considered a new source.¹

Also, EPA does not consider an expansion of a CAFO as a new source in its current CAFO rules and specifically state:

The Agency, however, decided against proposing to identify facility expansion as a trigger for the application of NSPS [New Source Performance Standards]. Many CAFOs oversize or over-engineer their waste handling systems to accommodate future increases in production. Thus, in many cases, the actual increases in production may not present a new opportunity for the CAFO to install the additional NSPS technologies--e.g. liners. To install liners, these operations would need to retrofit their facilities the same as existing sources would. EPA has explained above that such retrofitting would not be economically achievable in these animal sectors. Similarly, the costs associated with these requirements would represent a barrier to the expansion. Therefore, it would not be appropriate to require these operations, upon facility expansion, to meet the additional groundwater-related requirements that are a part of today's proposed NSPS.²

The proposed CAFO expansion does not trigger the prohibition in 40 CFR § 122.4. Also, Texas Water Code (TWC) § 26.503(a) does not prohibit a CAFO in a major sole source impairment zone from increasing the number of animals confined in an existing operation.

Comment 2:

Waco comments that there is no demonstration that there are sufficient remaining load allocations in the North Bosque River to allow for discharges from the expansion of this dairy or that existing dischargers were subject to compliance schedules. Waco states that based on EPA's letter dated 12/3/01, the Total Maximum Daily Loads (TMDLs) for the North Bosque did not include any allocation for discharges from RCSs and that no phosphorus load allocations were reserved for future CAFO expansions.

¹ 68 FR 7176, 7200 (February 12, 2003).

² 66 FR 3067 (January 12, 2001).

Response 2:

TMDL modeling assumptions do not automatically or directly become permit requirements or conditions. The modeling estimated the overall amount of load reduction to be expected from a combination of management practices and control measures, which were subsequently incorporated into the revised CAFO permit rules. TMDL water quality goals were established on the basis of anticipated reductions to be measured in-stream.

The North Bosque TMDL is based on a percent reduction goal for CAFO sources, to be achieved through improved best management practices (BMPs) required by permits. This is consistent with EPA guidance and goals. The reduction goal does not change if the number of cattle increases; success of the TMDL is to be measured in-stream, not by counting the number of cows.

Comment 3:

Waco is concerned that issuance of the proposed permit would defy the assumptions made in the TMDL for phosphorus inputs into the North Bosque River. Waco asserts that the proposed permit undermines each of the following assumptions made in the North Bosque River TMDL:

- A) 40,450 dairy cows in the watershed;
- B) 50% of solid manure from 40,450 dairy cows would be removed from the watershed;
- C) Phosphorus in the diet of permitted cows would be limited to 0.4%;
- D) Waste application on existing fields would be limited so that phosphorus never exceeds 200 parts per million (ppm);
- E) Waste application rates would be limited to the agronomic rates of the crop; and
- F) Initial phosphorus on new fields would be 60 ppm and could not exceed that level.

Response 3A – Cows in the Watershed:

The North Bosque River TMDL for phosphorus is based on narrative water quality criteria and uses BMPs to protect water quality. The TMDL does not limit the number of dairy cows in the watershed. Permits that are issued must be consistent with the TMDL. While this permit application adds to the number of permitted cows on the facility, the Applicant must construct RCSs that are designed to hold a 25-year, 10-day rainfall event. This will increase the RCS capacity by approximately 60% over the previous standard in earlier versions of the CAFO rules. It is also anticipated the loading will be reduced due to the emphasis the new CAFO rules place on phosphorus levels in soil application areas.

An adaptive management approach is an appropriate means to manage phosphorus loading in the Bosque. The TMDL Implementation Plan (TMDL I-Plan) emphasized this approach to achieve the phosphorus reductions targeted in the TMDL. The CAFO rules in 30 TAC Chapter 321 reflect the necessary adjustments to management practices necessary to, over time, reach the TMDL target. Accordingly, the TMDL is not directly tied to the number of animals permitted in the watershed; it is instead tied to BMPs, including the land application of the nutrients consistent with management practices that ensure appropriate utilization by the crops.

The model used in the TMDL demonstrated that water quality conditions would improve significantly even with many more dairy cattle in the watershed if management practices improved. The new CAFO rules incorporated more stringent management practices in the watershed in order to address phosphorus loading and regardless of the number of dairy cattle in the watershed, the in-stream water quality goals remain as they were established in the TMDL.

The TMDL I-Plan recognizes that new dairies may begin operating or existing dairies may expand in the watershed.³ New or expanding operations are required to meet all the new management practices found in the Chapter 321, Subchapter B CAFO rules, which were approved by EPA as meeting all federal requirements for the protection of water quality. The focus of the rules was to reduce nutrient loading by requiring BMPs designed to significantly decrease the potential for discharges. Special provisions applicable to the North Bosque watershed that were not in the previous version of the CAFO rules were designed and adopted to specifically address the TMDL requirements to reduce phosphorus loadings. The operational and management strategies in the rules and draft permit are designed to reduce nutrient loading and be consistent with the North Bosque River TMDL.

Response 3B – 50% Removal of Solid Manure from the Watershed:

The North Bosque TMDL has a goal of a 50% reduction in instream loading. The TMDL and TMDL I-Plan address growth of CAFOs through BMPs designed to decrease loading, not by capping the number of head or acres of land. Neither the TCEQ rules nor the TMDL I-Plan requires a 50% haul-out of collectible manure. New or existing CAFOs who seek to add head in the watershed are given five options for dealing with 100% of the collectible manure. Those options are found in TWC § 26.503(b)(2) and those options are:

- (A) Disposed of or used outside of the watershed;
- (B) Delivered to a composting facility approved by the ED;
- (C) Applied as directed by the commission to a waste application field owned or controlled by the owner of the CAFO if the field is not a historical waste application field;
- (D) Put to another beneficial use approved by the ED; or
- (E) Applied to a historical waste application field that is owned or operated by the owner or operator of the CAFO only if:
 - (i) Results of representative composite soil sampling conducted at the waste application field and filed with the commission show that the waste application field contains 200 or fewer ppm of extractable phosphorus; or
 - (ii) The manure is applied with commission approval, in accordance with a detailed nutrient utilization plan approved by the commission that is developed by:
 - (a) An employee of the United States Department of Agriculture's Natural Resources Conservation Service;

³ See "An Implementation Plan for Soluble Reactive Phosphorus in the North Bosque Watershed," December, 2002, page 26: "New or expanding dairy CAFOs will be required to demonstrate through the application process that they will operate under the nutrient management practices as stipulated in Chapter 321 rules pertinent to a major sole source impairment zone." (Emphasis added.)

- (b) A nutrient management specialist certified by the United States Department of Agriculture's Natural Resources Conservation Service;
- (c) The State Soil and Water Conservation Board;
- (d) The Texas Agricultural Extension Service;
- (e) An agronomist or soil scientist on the full-time staff of an accredited university located in the state; or
- (f) A professional agronomist or soil scientist certified by the American Society of Agronomy.

The nutrient management plan (NMP) submitted with the application reflects the Applicant's present intent to route manure off-site. However, the other disposal methods allowed by TWC § 26.503(b)(2) remain available to the Applicant, subject to modification of their NMP.

Response 3C – Phosphorus Limit in Diet to 0.4%:

The TMDL I-Plan states that dairy operators will receive training related to diet control but does not mandate lower phosphorus content in feed. There is no TCEQ rule related to requiring reduced phosphorus content in feed rations. The nutrient content in the annual wastewater and manure samples should reflect the Applicant's efforts to lower phosphorus content in feed rations if the Applicant pursues this BMP in an effort to manage nutrients.

The Applicant is required to implement a comprehensive nutrient management plan (CNMP) and one aspect of that planning process is the consideration for reduced phosphorus in the feed. The Applicant may consider the nutritional needs of his herd in implementing a CNMP.

Response 3D – Limiting Application so that Phosphorus Never Exceeds 200 ppm:

TCEQ established rules to implement the TMDL I-Plan and the draft permit is consistent with those rules. Neither the rules nor the TMDL I-Plan cap phosphorus at 200 ppm on LMUs. The model used in development of the TMDL did not provide that soil test phosphorous levels on application fields remain at or below 200 ppm. Predicted soil concentrations after the 39 years of application that were simulated by the TMDL model were not specifically considered in discussions or in development of the TMDL. The draft permit requires implementation of a nutrient management plan. When LMUs test at over 200 ppm of phosphorus, the Applicant must also implement a nutrient utilization plan (NUP) specific to those LMUs that takes into consideration the phosphorus crop removal rate.

Response 3E – Application Limited to the Phosphorus Needs of the Crop:

The model used for the TMDL simulated application at the "phosphorus agronomic rate" recommended by U.S. Department of Agriculture and others. Recommended agronomic rates account for some soil storage of phosphorus and may not be identical to the crop phosphorus "need only" application rate. The NMP provided by the Applicant addresses application limitations based on the agronomic needs of the crop. If phosphorus levels rise beyond 200 ppm on LMUs, a NUP must be implemented that will require phosphorus application be based on

crop removal levels, rather than on the agronomic needs of the crop. This is consistent with the TCEQ CAFO rules.

Response 3F – Phosphorus on New Fields Would Not Exceed 60 ppm:

TCEQ established rules to implement the TMDL I-Plan and the draft permit is consistent with those rules. The model assumed that new waste application fields began at soil concentrations of 60 ppm for phosphorus as an estimate of typical conditions across the North Bosque watershed. The model did not limit application to the new waste application fields to keep soil phosphorus at or below 60 ppm, and was not able to do so because of model code limitations. Soil concentrations in the simulated new waste application fields would have been something different than 60 ppm after the 39 years of application simulated by the TMDL model, but that was not specifically considered during development of the TMDL. The TMDL is based on meeting in-stream water quality criteria, not soil concentrations. The permit is consistent with nutrient management requirements in the TCEQ CAFO rules.

Comment 4:

Waco comments that contrary to the TMDL, the draft permit works as a disincentive for a dairy CAFO to transport waste to a compost facility or out of the watershed. Waco notes that the basic goal of the TMDL strategy is to remove from the North Bosque watershed approximately 50% of the manure produced by the dairies. The expanded use of third party fields with little control of nutrient application encourages dairies to avoid exporting of waste.

Response 4:

The permit is consistent with the TCEQ rule requirements for allowing the Applicant to use third party fields. Composting is one of the options available to the Applicant for handling its waste. Sludge may be beneficially utilized by land application to third party fields in accordance with Section VII.A.8(e)(6). Alternatively, Section VII.A.5(a)(7) allows sludge to be disposed by the following method(s):

- i. Delivery to a composting facility authorized by the ED;
- ii. Delivery to a permitted landfill located outside of the major sole source impairment zone, subject to the requirements of commission rules relating to industrial solid waste;
- iii. Beneficial use outside of the major sole source impairment zone;
- iv. Put to another beneficial use approved by the executive director; or
- v. Application of sludge to LMUs provided that the NMP is revised prior to applications.

The draft permit and TCEQ rules prohibit application on third fields when phosphorus levels reach 200 ppm. The draft permit also sets a tiered application rate based on soil test results consistent with the Natural Resources Conservation Service (NRCS) Practice Standard Code 590.

Comment 5:

Waco states that the ED has provided no technical justification that the measures recited in the draft permit will meet the water quality standards for phosphorus and actually attain the reductions in phosphorus loading set forth in the TMDL and TMDL-I Plan for the North Bosque River.

Response 5:

The ED disagrees with this comment. TCEQ rules and provisions in the draft permit contain control actions and management measures to address the goals of the TMDL. TCEQ has done and will continue to do instream monitoring, and the issuance of CAFO dairy permits in the Bosque under the new rules will provide for additional protection in order to meet the goals of the TMDL.

The TMDL I-Plan recognizes an adaptive management approach is an appropriate means to manage phosphorus load to the stream. The TMDL I-Plan emphasizes this approach to achieve the phosphorus reductions targeted in the TMDL. Adaptive management envisions adjustment of BMPs over time as necessary to reach this target. The TMDL anticipated that, to control loading to the stream, dairy CAFO permittees would implement those BMPs that best addressed site-specific conditions. Accordingly, the TMDL is not directly tied to the number of animals permitted in the watershed; it is instead tied to the amount of nutrients that may be land applied consistent with BMPs that ensure appropriate agricultural utilization of nutrients.

The TMDL I-Plan also included a recommendation that the CAFO rulemaking consider more stringent requirements for RCSs, in order to reduce overflows from RCSs. In response, the CAFO rules adopted in July, 2004 by the Commission included the following requirements consistent with the TMDL I-Plan to help manage the phosphorus load in the stream:

1. RCSs must be designed to contain the volume associated with a 25 year/10 day rainfall event;
2. A permanent marker, graduated in one foot increments from the maximum sludge accumulation volume to the top of the spillway must be installed;
3. A RCS management plan detailing procedures for proper operation and management of wastewater levels based on design and assumptions of monthly expected operating levels must be developed;
4. Daily monitoring records of wastewater levels must be conducted;
5. Notification of TCEQ of discharges within one hour of discovery;
6. Discharge sample analyses must be submitted to the TCEQ; and
7. A report of discharges must be submitted to the TCEQ regional office, documenting that overflows from cumulative rainfall events were beyond the Applicant's control.

Comment 6:

Waco comments that federal effluent limitations for CAFOs were found to be deficient in the *Waterkeeper* case for failing to include the “best conventional pollutant control technology” (BCT) based effluent limitations specifically designed to reduce the discharge of pathogens, including fecal coliform bacteria.⁴ These pathogens require TCEQ to use its best professional judgment on a case-by-case basis to set the required technology based limitations.

Response 6:

The requirements in the draft permit satisfy this requirement because the North Bosque River TMDLs are intended to achieve significant reductions in the annual average concentrations and total annual loading of soluble phosphorus in the river. The TMDLs are designed to do this by focusing on controlling soluble phosphorus loading and stream concentrations to obtain and protect designated uses. The management measures for controlling phosphorus loading will also have some corollary effect on reducing pathogen and bacteria loading, since non-point source nutrient and pathogen loads largely originate from the same sites and materials and are transported via the same processes and pathways. Other provisions in the rules and draft permit directed at reducing and minimizing all pollutants, including pathogens and bacteria, that are potential constituents of animal wastes include:

1. Requiring a larger RCS with capacity to contain a designed 25-year, 10-day rainfall event (approximately 60% larger than required to contain the 25-year, 24-hour rainfall event);
2. Establishing an RCS management plan;
3. Controlling runoff from manure piles by covering, berming, or requiring that they drain into an RCS;
4. Setting additional minimum buffer distances between land application units and surface water in the state;
5. Prohibiting nighttime land application between 12 a.m. and 4 a.m.; and
6. Requiring a NMP that uses phosphorus transport considerations to determine allowable applications of nutrients. The P-Index approach reduces allowable application of nutrients to levels that are appropriate for reducing and minimizing all pollutants that are constituents of animal wastes.

Additionally, 40 CFR § 122.43(k)(3) allows states to use BMPs to control or abate discharges “when numeric effluent limitations are infeasible.” In the case of North Bosque dairies, they are only authorized to discharge in the event of a chronic rainfall event that exceeds the 25-year, 10-day storm event. If and when such an event occurs, the amount of rainfall involved and any resulting discharge will be highly variable both in volume and concentration of waste. Discharges from chronic rainfall events are not comparable to the continuous discharges from municipal wastewater treatment plants or industrial facilities

⁴ See *Waterkeeper Alliance, Inc. v. Environmental Protection Agency*, 399 F.3rd 486 (2nd Cir. 2005).

In the regulation of CAFOs, it is infeasible to develop and apply numeric limitations to infrequent, highly variable potential discharges that may occur at CAFOs. The *Waterkeeper* case found that the NMPs developed by applicants were the equivalent of effluent limitations.

Comment 7:

Waco comments that the Applicant, through its contracts regarding the use of third party fields will, in effect, control those fields. Thus, these third party fields should be considered land management units (LMUs) and the exact location and boundaries of these fields identified in the permit application. These fields should also be subject to all other LMU requirements, including land applying in accordance with an NMP and CNMP, etc.

Response 7:

TWC § 26.503 provides for disposal practices for dairy CAFOs, which include allowing manure to be put to other beneficial uses, such as land application on third party fields. 30 TAC § 321.42(j)(3) was specifically worded to reflect that “LMUs are not associated with third party fields.”⁵ The CAFO operator does not control the third party fields under contract with the CAFO. Application on third party fields is optional and represents “excess capacity to provide for more sound waste management by existing dairy CAFOs.”⁶ Even though an applicant does not control third party fields, the rules provide that an applicant is responsible for any non-compliance with the permit or TCEQ rules on such fields. Additionally, third party fields have a 200 ppm cap on phosphorus. Once a third party field contains phosphorus at 200 ppm or greater, land application must cease. Rates of application are set based on annual soil test levels as long as they are below 200 ppm.

Comment 8:

Waco states that the federal courts in the *Waterkeeper* case held that NMPs should be reviewed by the permitting authority, included in the permit, and made available to the public. Thus, Waco comments that TCEQ should apply the court’s reasoning to these other types of required plans and must evaluate each prior to permitting and make them available to the public throughout the public comment period: CNMPs, NUPs, RCS management plans, and pollution prevention plans (PPPs). Waco states that TCEQ should suspend consideration of the permit application until the Applicant has submitted its current PPP, CNMP, and RCS management plan and those documents are reviewed and approved by the agency, incorporated into the permit, and made available to the public.

⁵ 29 TexReg 6652, 6658 (July 9, 2004).

⁶ *Id.* at 6692.

Response 8:

Waterkeeper states that if the NMP is not included in permits the public is deprived of the right to assist in development, revision, and enforcement of an effluent limitation. EPA has established nine critical elements to be considered as part of the NMP. Included with the permit application is a table that lists the nine elements and the location of those elements in the file reviewed by the ED and made available to the public. The ED requires North Bosque dairies to submit their NMP with their permit applications and it was technically reviewed and available to the public.

A CNMP is not required by the CWA and is not addressed in the *Waterkeeper* case. TCEQ rules at 30 TAC § 321.42(s) require all dairy CAFOs in a major sole-source impairment zone to operate under a CNMP approved by the Texas State Soil and Water Conservation Board. Bosque dairy permits required implementation of the CNMP by December 31, 2006, and the Applicant should maintain a copy as part of their PPP. However, the rules do not require the CNMP to be submitted to TCEQ and the review is not part of the CAFO permitting process. Furthermore, the CNMPs are confidential under state law as part of the local soil and water conservation district's files, unless the Applicant chooses to make the information available to the public. However, most of the information contained in the CNMP is part of the permit technical information packet and available in that form to the public.

NUPs are NMPs that utilizes a crop removal application rate. However, NUPs are not required until annual testing indicates phosphorus in excess of 200 ppm. Based on the language in the statute and rule, the NUP is not considered part of the permit, but may be changed to address changing conditions. TWC § 26.504 requires testing every 12 months to determine whether phosphorus levels exceed 200 ppm. Reaching the 200 ppm level triggers the requirement to develop and implement an NUP. TWC § 26.504(c) states "the operator shall file with the commission a new or amended nutrient utilization plan with a phosphorus reduction component. . . ." The statute does not require the NUP to be a part of the permit or permit application. 30 TAC § 321.40 tracks the statute, but also states that land application can begin under a NUP 30 days after the NUP is filed with the ED, unless the ED has returned the NUP for not meeting rule requirements. This requirement is also an indication that the NUP is not intended to be part of the permit.

This permit requires that the Applicant implement an RCS management plan and maintain a copy in the PPP as required by 30 TAC § 321.42(g). TCEQ rules do not require review of RCS management plans prior to issuing the permit. The RCS management plan must establish expected end of the month water storage volumes for each RCS. These maximum levels are based on the design assumptions used to determine the required size of the RCS. This plan assures that the Applicant will maintain wastewater volumes within the design capacity of the structures. The Applicant must document and provide an explanation for all occasions where the water level exceeds the expected end of the month storage volumes. By maintaining the wastewater level at or below the expected monthly volume, the RCS will be less likely to encroach into the volume reserved for the design rainfall event and/or discharge during smaller

rainfall events. Until the actual expansion of the RCS system is completed and volumes certified, the RCS management plan cannot be completed and implemented.

The draft permit lists the requirements for what to include in the PPP. The Applicant is required to have documentation for all of the following as part of their PPP: Copy of the CNMP, NMP, NUP (if required), RCS liner certifications, the RCS operation and management plan, and the capacity of each RCS, as certified by a licensed Texas professional engineer. The draft permit specifically allows the Applicant to amend the PPP and lists specific instances when it must be amended, one being within 90 days of receiving written notification from the ED that the plan does not meet permit requirements.

The PPP is not part of the permit review process, but the information contained in the application, technical information packet, and the NMP make up the core content of the PPP. The other items contained in the PPP are not subject to TCEQ review except during site investigations.

Comment 9:

Waco questions computations in the permit application regarding the amount of phosphorus that will be produced by the Applicant. Waco computes that over ½ the phosphorus produced by the facility is ignored in the permit. Therefore, the draft permit fails to include plans for how all the phosphorus produced will be handled. Additionally, Waco comments that the calculations in the 12/11/06 NMP would allow the Applicant to land apply up to 3.3 times the phosphorus removal rate on its six LMUs.

Response 9:

It is projected that 999 cows will generate 389 lbs. of phosphorus per day. The calculation is based on a book value for phosphorus production by dairy cows developed by the American Society of Agricultural and Biological Engineers. It is part of a set of data intended for use in designing facilities to accommodate actual waste production.

As long as the phosphorus being land applied or hauled-out is accounted for as required under TCEQ rules, an accounting to reflect what remains in the CAFO production area is not necessary.

The NRCS 590 Standard does not require that all LMUs be limited to the phosphorus removal rate of application. If the soil test levels for phosphorus are low, the crop nitrogen recommendation or some multiple of the crop phosphorus recommendation is the allowable rate. Only when the soil test levels exceed 200 ppm is the crop phosphorus removal rate of application a requirement.

Comment 10:

Waco comments that the NMPs submitted by the Applicant do not calculate the maximum allowable solids application correctly because it is based on an incorrect phosphorus index calculation.

Response 10:

United States Department of Agriculture, Natural Resources Conservation Service, Agronomy Technical Note Number 15 *Phosphorus Assessment Tool for Texas* contains the following definition for *Organic Phosphorus (P₂O₅) Application Rate*:

The P organic application rate is the nutrient amount, in pounds per acre (lbs/ac), of phosphorus as P₂O₅ from organic sources (manure, poultry litter, lagoon effluent, etc.) that is applied to the soil. The rate ranges from 0 application to greater than 150 lbs/ac P₂O₅.

This definition indicates that the phosphorus index should reflect the amount of phosphorus that is applied as opposed to the amount of phosphorus that could potentially be applied based on Maximum Planned Application Rates (MPAR). The rate of application used for the phosphorus index appropriately reflects the planned application. Therefore, the phosphorus index is correct.

Comment 11:

Waco asserts that the application rates for LMUs #2-#5 are not properly calculated in the NMP because the rates are based on established crops and the proposed crops have not yet been established.

Response 11:

The Applicant indicates coastal Bermuda will be planted in LMUs #1, #2, #3, and #6 and Triticale in LMUs #4 and #5. Establishment of coastal Bermuda in Hamilton County occurs in a single year. The fertilization recommendations in the NRCS 590 spreadsheet do not have to be reduced for establishment of coastal. The ED does not have any information that indicates the establishment of coastal needs less fertilization than what is listed in the NRCS 590 spreadsheet.

Comment 12:

Waco asserts that the application rates for LMU #6 are not properly calculated in the NMP because the application rate exceeds the nitrogen crop requirement.

Response 12:

The ED agrees with this comment and for purposes of clarity and accuracy the Applicant was required to submit a revised NMP that re-calculates the application rates for LMU #6. The

revised NMP was submitted by the Applicant, reviewed by the ED and is available to the public in the Applicant's file at the Office of the Chief Clerk and at the Hamilton County Courthouse, 100 North Rice, Hamilton, Texas. The revised NMP properly provides for the nitrogen crop requirement.

Comment 13:

Waco comments that the NMP fails to include lab analysis solids from the settling basins and that the NMP should be revised.

Response 13:

TCEQ rules do not require analysis of settling basin solids. If settling basin solids are applied to LMUs or third party fields then the draft permit requires an annual sample analysis. Section X.D. of the draft permit states:

Manure includes slurry from freestall barns, solids from open lots, settling basin solids, bedding, compost, feed, and other raw materials commingled with feces and/or urine. If slurry, compost or settling basin solids are being land applied an annual sample analysis must be provided along with analysis for other manure solids and wastewater.

Comment 14:

Waco comments that the water balance in the permit application used to calculate runoff amounts is not realistic and is flawed. Waco contends that the Applicant is converting 24-hour runoff curve numbers to 30-day run off curve numbers and that there is no justification for using 30-day runoff curve numbers in calculating runoff from 10-day events.

Response 14:

In 30 TAC § 321.38(e)(3), RCS designs are to be based on certain technical standards developed by NRCS or others. The 30-day runoff curve number was originally utilized by the NRCS as part of reservoir operation studies as described in Texas Engineering Technical Note No. 210-18-TX3, dated March, 1983. Since the early 1990s, the 30-day runoff curve number has been applied by NRCS engineers at the state and national levels to predict average monthly runoff for use in the design of animal waste retention structures. Currently, the 30-day runoff curve number is applied in software developed and used for that purpose by NRCS in Texas and across the nation. The application of the 30-day runoff curve number is an accepted engineering practice for predicting average monthly runoff from average monthly precipitation. The application of the concept to this permit for the purpose of predicting the average monthly runoff from the RCS drainage area and the average monthly runoff from the application fields in the water balance calculations is appropriate. Use of a 1-day curve number for runoff from the application fields could result in a smaller volume requirement for the RCS. The 30-day runoff curve number in the water balance calculations is an appropriate approach. The 25-year, 10-day

storm runoff used in the application was not calculated using the 30-day runoff curve number, but is based on a 1-day runoff curve number.

Comment 15:

Waco comments that the methodology for calculating agronomic rates is flawed because the NMP fails to account for the nutrients available to plants in the root zone to satisfy the crop requirement. Instead, application of the annual crop requirement is allowed regardless of the actual soil nutrient content until phosphorus reaches a concentration of 200 ppm.

Response 15:

The methodology used by the Applicant for the calculation of waste application for beneficial use follows the requirements of the NRCS 590 Standard as required by the CAFO rules in 30 TAC § 321.42(i). The NMP based on the NRCS 590 Standard does account for nutrients available to plants. The phosphorus index makes current soil test levels for phosphorus a component of that index value that affects the rate of application.

Comment 16:

Waco notes that Section VII.A.8. of the draft permit states the certified NMP dated July 21, 2006 will be implemented on issuance of the permit. Waco notes the permit file includes 13 additional or partial NMPs that were submitted to TCEQ and that is difficult to know which portions are being relied on. Waco requests the Applicant submit a complete and certified NMP with each page displaying the same date and the draft permit be updated to reflect the most recently certified NMP.

Response 16:

The ED agrees with the comment to the extent that a complete final NRCS 590 spreadsheet output should be included in the application that is signed by the generator of the NMP and include the signature/agreement of the producer. For the purposes of clarity and accuracy, the Applicant submitted a revised and complete certified NMP to address this issue. In response to the comment, Section VII.A.8.(a) was changed and now reads:

Nutrient Management Plan (NMP) Required. The certified NMP dated July 24, 2007 shall be implemented upon issuance of this permit. The plan shall be updated as appropriate or at a minimum of annually according to NRCS guidance for Practice Standard 590. The operator shall make available to the executive director, upon request, a copy of the site specific NMP and documentation of the implementation.

Comment 17:

Waco questions the monitoring of sludge volume in the existing lagoons. Waco notes that the draft permit does not require the Applicant to measure the sludge volume in the lagoons until

three years after the permit is issued. Waco requests that sludge measurement in the lagoons be required when the permit is issued and annually, thereafter.

Response 17:

30 TAC § 321.39(c) prohibits the Applicant from allowing sludge accumulation to exceed the design volume. This is achieved by removing the sludge according to the design schedule. The design criterion for this dairy is five years of accumulation. The RCS management plan will establish accumulation rates in the RCSs, which will identify the current sludge volume in each RCS. Taking volume measurements starting in year three will help evaluate the accumulation rates prior to reaching the five year design volume. By starting in year three with the measurements, the operator has time to complete new construction and develop and implement an RCS management plan to appropriately manage the sludge volume in the ponds. Furthermore, daily pond marker readings should assist in determining excessive sludge accumulation in any RCS.

Comment 18:

Waco is concerned that the NMP is allowed to be based on a single annual sample of wastewater and manure. Waco is concerned that single samples are not representative for evaluating the characteristics of the wastewater and is likely to underestimate the concentrations of phosphorus. Waco recommends that samples of wastewater being land applied should be taken at least once during every irrigation event and should also be obtained from the irrigation pipeline apparatus at a sampling point located after the pump at the source lagoon.

Response 18:

The permit provisions for sampling and monitoring are consistent with 30 TAC § 321.36(e) and (g), and with the requirements of the NRCS Practice Standard Code 590. The draft permit requires annual sampling and the NMP must be updated to modify application amounts based on soil testing and wastewater/manure/slurry testing. Sampling and updating of the NMP after every irrigation event would not be practical and is not required under the current version of the CAFO rules.

Comment 19:

Waco comments that the permit fails to remove 50% of collectible manure from the watershed as recommended by the North Bosque TMDL. Waco notes that while removal is listed as one of the possible options, there is no indication that any of the manure transferred to other persons will be sent to composting or out of the watershed.

Response 19:

New or existing CAFOs who seek to add head in the North Bosque watershed are given five options for dealing with 100% of the collectible manure. Those options are found at TWC §

26.503(b)(2). See Response #3B for those options. The NMP submitted with the application reflects the Applicant's present intent to dispose of manure off-site. However, the other disposal methods allowed by TWC § 26.503(b)(2) remain available to the Applicant.

Comment 20:

Waco comments that Section VII.8(c)(2) of the draft permit allows land application on land exceeding 200 ppm of phosphorus as long as a NUP has been prepared and approved by TCEQ. Waco notes that even when the phosphorus concentrations exceed 500 ppm, application may continue as long as the NUP contains a phosphorus reduction component. Waco states that land application on fields that exceed 200 ppm of phosphorus should be prohibited in order to be consistent with the TMDL and if not prohibited, be subject to a NUP with a phosphorus reduction component. Waco notes that on page 16 of the North Bosque I-Plan it states that formal enforcement will result if CAFOs apply waste or wastewater to a waste allocation field that has been documented to have exceeded 200 ppm of phosphorus in zone 1 of the soil horizon.

Response 20:

The draft permit requirements are consistent with the rules relative to phosphorus reduction in waste application fields. The use of phosphorus based assessments requires action on fields exceed 200 ppm of phosphorus. All waste application is limited under the permit provisions to avoid significantly increasing phosphorus runoff into the North Bosque River. An LMU that reaches 200 ppm of phosphorus triggers the NUP requirement. The NUP must be approved by the ED prior to land application of any additional manure, sludge, or wastewater in an LMU. Application of manure, sludge, or wastewater to third party fields must stop if a field reaches a phosphorus level of 200 ppm or higher.

The table below illustrates numbers from the Applicant's NMP to compare the crop requirement for phosphorus versus the actual pounds applied. In LMUs #1, #2, #4, #5 and #6 the Applicant is planning to land apply effluent at significantly less amounts than the maximum allowable. LMU #3 will only receive solids.

Nutrient Application

LMU #	Soil Test P. (ppm)	Crop P2O5 Required (pounds/ac.)	Pounds Applied P2O5 (pounds/ac.)	Percentage of Maximum Allowable
1	100	103	42	41
2	72	103	22	21
3	8	154	154	100
4	4	83	25	30
5	6	83	30	36
6	16	115	48	42

Page 16 of the TMDL I-Plan for the North Bosque does read as indicated by Waco. However, immediately following this statement the TMDL I-Plan states that more information is available in the section entitled "Enforcement Program." In that section of the TMDL I-Plan, it states that owners of facilities would be subject to enforcement for land applying on fields where soils exceeded 200 ppm, unless applied according to an approved NUP.⁷ This is consistent with TCEQ rules that require a NUP to land apply on LMUs that exceed 200 ppm of phosphorus and prohibit land application on third party fields that exceed that amount.

Comment 21:

Waco states that Section VII.A.8(e)(5)(i)(F) of the draft permit requires soil tests on third party fields after waste is applied. However, it does not require initial sampling prior to applying waste. Therefore, one-time application of wastes can occur on third party fields with no way to determine if the application rates are within the required limits.

Response 21:

The ED agrees that the permit language should be modified to make it clear that initial sampling is required on third-party fields. In response to the comment, Section VII.A.9.(b)(1) was modified and now reads:

Initial Sampling. Before commencing manure sludge or wastewater application to LMUs or third-party fields the permittee shall have at least one representative soil sample from each of the LMUs or third-party fields collected and analyzed according to the following procedures.

Comment 22:

Waco states the meaning of the phrase "not exceed the nitrogen application rate" at paragraph VII.A.8(e)(4)(i)(C) of the draft permit is unclear. The term "nitrogen application rate" is not defined in the permit or in 30 TAC, Chapter 321. To impose the appropriate limitation and to make the permit consistent with the remainder of the permit, Waco recommends this phrase be replaced with "not to exceed the nitrogen crop removal rate."

Response 22:

The ED declines to make this change because 30 TAC § 321.42(i)(5)(A) requires that land application occur in accordance with the NRCS Practice Standard Code 590. This standard expresses the limit for nitrogen application adequately. Unless otherwise limited, the nitrogen application rate will be limited to the crop nitrogen requirement in the NRCS Practice Standard Code 590.

⁷ See "An Implementation Plan for Soluble Reactive Phosphorus in the North Bosque Watershed," December, 2002, page 39.

Comment 23:

Waco requests revision to the provisions applicable to third party fields at paragraphs VII.A.8(e)(5)(D) and (E) to ensure protections apply when the measured soil phosphorus levels equals values of 50, 51, 150, and 151 ppm. Waco comments that the ED should include language that makes it clear that requirements apply when a value is less than or equal to each of these values.

Response 23:

The ED partially agrees with the comment and modifies the following sections of the draft permit to better define the nitrogen application rate and clarify that the ranges include 50, 150, and 200 ppm. Part VII.A.8(e)(5)(i)(C) of the draft permit now reads:

Land application rates shall not exceed the crop nitrogen requirement when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is less than or equal to 50 ppm phosphorus.

Part VII.A.8(e)(5)(i)(D) of the draft permit now reads:

Land application rates shall not exceed two times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 50 ppm phosphorus and less than or equal to 150 ppm phosphorus.

Part VII.A.8(e)(5)(i)(E) of the draft permit now reads:

Land application rates shall not exceed one times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 150 ppm phosphorus and less than or equal to 200 ppm phosphorus.

Comment 24:

Waco requests revision to the provisions applicable to third party fields at paragraphs VII.A.8(e)(5)(i)(D) and (E) to make it clear that the application rate cannot exceed the annual nitrogen crop removal rate where that value is more restrictive. Waco also requests that language be added to those sections to make it clear when the requirements of NRCS Code 590 are more strict than the requirements in VII.A.8(e)(5)(i)(C)-(E), then NRCS Code 590 should apply.

Response 24:

The ED declines to make this change because 30 TAC § 321.42(i)(5)(A) requires that land application occur consistent with the NRCS Practice Standard Code 590. This standard expresses the limit for nitrogen application adequately. Unless otherwise limited, the nitrogen application rate will be limited to the crop nitrogen requirement in the NRCS Practice Standard Code 590. Also, *see* Response #22.

Comment 25:

Waco comments that NUPs (when soil phosphorus exceeds 200 ppm) and NMPs should be required for each third party fields and submitted and reviewed during the permit application process.

Response 25:

The draft permit limits application on third party fields based on soil test phosphorus levels. A NUP would not be required for a third party field that reaches or exceeds 200 ppm or more of phosphorus because at that level land application must cease. The application limitations on third party fields are consistent with the NRCS Practice Standard Code 590. Similar to an NMP, as soil phosphorus levels increase on third party fields, the Applicant will have to reduce waste application rates in order to continue land applying on those fields and to prevent those fields from exceeding 200 ppm of phosphorus.

Comment 26:

Waco requests that Section VII.8(e)(5) of the draft permit be revised to include a requirement that records of crops and crop yields be submitted to TCEQ. Otherwise, the phosphorus crop removal rates cannot be calculated and compliance with the phosphorus application rate limitations cannot be determined.

Response 26:

Record keeping requirements at 30 TAC § 321.46(d)(8)(f) state the actual yield of each harvested crop must be recorded on a monthly basis. The information is available to the ED during field investigations and in the annual report submitted to the ED. Crop removal rates are based on yields when the NMP software is used.

Comment 27:

Waco comments that the NMP only addresses the first year of the permit term and states that the NMP should be prepared so that it shows the impact of all nutrient management issues over the five year term and whether the operation is sustainable.

Response 27:

30 TAC § 321.36(d)(2) states the operator shall create and maintain a site-specific NMP along with documentation of implementation. 30 TAC § 321.36(e) and (g), require annual sampling and the NMP must be updated to modify application amounts based on soil testing and wastewater/manure/slurry testing. Because the NMP is likely to change each year based on site specific sampling results an NMP for the term of the permit would not be relevant. The updated NMP is kept in the PPP and available during field investigations.

Comment 28:

Waco notes that Section X.F. of the draft permit requires the Applicant to install and maintain buffers according to NRCS standards. Waco notes that NRCS has practice standards for “filter strips,” but not for “vegetative buffers.” Therefore, TCEQ should include a definition for “vegetative buffers” in the permit or require that they meet the same standard as “filter strips” in NRCS Code 393.

Response 28:

Although not defined by TCEQ rules, vegetative buffers are commonly understood to mean vegetation that reduces shock due to contact. NRCS Practice Code 393 refers to Practice Code 391, *Riparian Forest Buffer*. Riparian forest buffers are areas predominantly in trees and/or shrubs located adjacent to an up-gradient from watercourses or water bodies. One of the purposes of a riparian forest buffer is to reduce excess amounts of sediments, organic material, nutrients and pesticides in surface runoff. This purpose is the same as that performed by vegetative filter strips according to NRCS Practice Code 393.

Comment 29:

Waco states that the requirement for “temporary filter strips” in Section X.F is ambiguous. For example, LMUs #4 and #5 have a requirement for 100 feet of vegetative buffer, 33 feet of filter strip, and an additional temporary filter strip of 150 feet. Waco comments that this seems to indicate a need for 100 feet of vegetative buffer and 183 feet of filter strip during the “temporary” period. However, this conflicts with the map in Attachment B of the permit and the footnote is unclear since two of the LMUs have different permanent filter strip requirements (the foot note simply reads “133 to 150 feet total.” Waco comments that either the map or Section X.F be changed.

Response 29:

The following is an excerpt from an NRCS letter to the Applicant dated December 19, 2006.⁸ It demonstrates that using the Revised Universal Soil Loss Equation version 2 (RUSLE 2) provides

⁸ The Applicant provided this documentation as part of their plan to manage nutrients.

the equivalent protection of a temporary filter strip for cropland with the final filter strip on the LMUs when converted to permanent grass on the LMUs in question.

For LMU 4, the sediment delivery once established in permanent grass, in the scenario allowed by the TCEQ rule, is 0.29 tons/acre/year according to RUSLE2, the NRCS approved soil erosion model. The sediment delivery if left in cropland, with contour buffer strips (assuming uniform slopes) and with the planned filter strips is 0.22 tons/acre/year. These 2 numbers are very similar. If left in cropland, simply extending the filter strip to a total of 150 feet reduced sediment delivery to exactly what is estimated for the permanent grassed scenario (0.29 tons/acre/year), which is acceptable by the rule. I feel that this is the best option.

For LMU #5, the same scenario exists. The sediment delivery for established permanent grass is 0.15 tons/acre/year. For cropland with contour buffer strips (assuming uniform slopes) and with the planned filter strips, the sediment delivery is 0.20 tons/acre/year. Allowing for cropland production to continue, but with extending the filter strip to a total of 150 feet, the sediment delivery is 0.16 tons/acre/year. The filter strip is an extension of the buffer in LMU #4 and should be left the same width for planting purposes.

Comment 30:

Waco comments that it is not clear where the measurement of the vegetative buffers and filter strips begin in relation to the stream bed. Waco states that the language should specify that measurement is from the banks of the stream, not the centerline and the Applicant should be required to mark the boundary between the application area and the buffer in order to allow adequate enforcement.

Response 30:

Filter strips,⁹ vegetative buffers, and riparian forest buffers are, by definition, vegetated strip flow lengths. These vegetated strips can only exist as close as the normal water line or at the top of the bank.¹⁰ The Applicant has to maintain the distance from where the vegetation can be established. Field marking of land application areas is not required by the regulations. An adequate compliance determination can be made without requiring marking of buffer widths.

Comment 31:

Dr. Lake Davis and Lonnie Davis commented that they were concerned about fly control at the dairy.

⁹ Filter strips are an area of herbaceous vegetation.

¹⁰ Per Practice Standard Code 391.

Response 31:

The CAFO rules in 30 TAC, Chapter 321 are designed to require facilities to operate in such a manner as to prevent the creation of nuisance conditions. All waste, including manure, litter, bedding, feed waste and any water contaminated by waste must be collected, stored, treated, and used in compliance with BMPs for handling waste pursuant to their PPP. Fly control should be a component of those BMPs where appropriate. Also, if the Applicant creates a nuisance condition, 30 TAC § 321.43(j)(1)(B) states the operator must take the necessary action to identify and abate any nuisance condition that occurs as soon as practicable or as specified by the ED.

If concerned about potential nuisance conditions, the public may contact TCEQ's Dallas/Fort Worth Region Office at 817-588-5800, TCEQ's Stephenville Special Project Office at 1-800-687-7078, or the statewide toll-free number at 1-888-777-3186. Additionally, you may file a complaint on line at <http://www.tnrcc.state.tx.us/complaints/index.cfm>. TCEQ's regional staff investigates public complaints and the agency takes appropriate enforcement action if the investigator documents a violation. Finally, the draft permit does not limit the ability to use common law remedies for trespass, nuisance, or other causes of action in response to activities that may or actually do result in injury or adverse effects on human health or welfare, animal life, vegetation, or property, or that may or actually do interfere with the normal use and enjoyment of animal life, vegetation, or property.

The following changes were made to the draft permit in response to comments:

Section VII.A.8.(a) was changed and now reads:

Nutrient Management Plan (NMP) Required. The certified NMP dated July 24, 2007 shall be implemented upon issuance of this permit. The plan shall be updated as appropriate or at a minimum of annually according to NRCS guidance for Practice Standard 590. The operator shall make available to the executive director, upon request, a copy of the site specific NMP and documentation of the implementation.

Section VII.A.8(e)(5)(i)(C) of the draft permit was changed to state:

Land application rates shall not exceed the crop nitrogen requirement when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is less than or equal to 50 ppm phosphorus.

Section VII.A.8(e)(5)(i)(D) of the draft permit was changed to state:

Land application rates shall not exceed two times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 50 ppm phosphorus and less than or equal to 150 ppm phosphorus.

Section VII.A.8(e)(5)(i)(E) of the draft permit was changed to state:

Land application rates shall not exceed one times the phosphorus crop removal rate, not to exceed the crop nitrogen requirement, when soil phosphorus concentrations in zone 1 (0-6 inch incorporated; 0-2 or 2-6 inch not incorporated) depth is greater than 150 ppm phosphorus and less than or equal to 200 ppm phosphorus.

Section VII.A.9.(b)(1) was changed to:

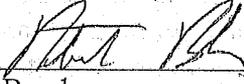
Initial Sampling. Before commencing manure sludge or wastewater application to LMUs or third-party fields the permittee shall have at least one representative soil sample from each of the LMUs or third-party fields collected and analyzed according to the following procedures.

Respectfully submitted,

Texas Commission on Environmental Quality

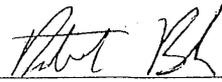
Glenn Shankle
Executive Director

Robert Martinez, Director
Environmental Law Division

By 
Robert Brush
Environmental Law Division
State Bar No. 00788772
Representing the EXECUTIVE DIRECTOR of the
Texas Commission on Environmental Quality

CERTIFICATE OF SERVICE

I certify that on August 9, 2007 the "Executive Director's Response to Public Comments" for Permit No. WQ0004108000 was filed with the Texas Commission on Environmental Quality's Office of Chief Clerk.



Robert D. Brush, Staff Attorney
Environmental Law Division
State Bar No. 00788772

TEXAS
COMMISSION
ON ENVIRONMENTAL
QUALITY

2007 AUG - 9 PM 4: 06

CHIEF CLERKS OFFICE

ATTACHMENT E

B. Any criminal convictions of the state of Texas and the federal government.

N/A

C. Chronic excessive emissions events.

N/A

D. The approval dates of investigations. (CCEDS Inv. Track. No.)

1	03/12/2002	(IE0018219001001
2	06/25/2002	(830)
3	06/28/2002	(3818)
4	08/22/2002	(7125)
5	06/20/2003	(114949)
6	08/20/2003	(148966)
7	03/31/2004	(262838)
8	08/19/2005	(405009)
9	03/20/2006	(453167)
10	09/29/2006	(431192)
11	11/10/2006	(516031)
12	07/16/2007	(567680)
13	11/09/2007	(594717)

E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 05/01/2002 (830)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(19)(F)

Description: THE WASTE STORAGE POND WAS ABOVE THE REQUIRED 24-HR 25-YR RAINFALL CAPACITY.

Date: 08/09/2002 (7125)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.42(e)

Description: Construction without authorization or notification of a retention storage pond

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(10)(C)

Description: Failure to submit required testing requirements for retention pond.

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.42(i)

Description: Failure to submit required data, documents, and plans to match site plan on the Permit

Date: 02/23/2004 (262838)

Self Report? NO

Classification: Minor

Citation: 30 TAC Chapter 321, SubChapter B 321.39(f)(16)(A)

Description: Failure to provide site specific documentation that no significant hydrologic connection exists between the contained wastewater and the waters in the state

Date: 03/17/2006 (453167)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 321, SubChapter B 321.33(p)

Description: Failure of the Regulated Entity holding a current authorization, to obtain an amendment prior to making any modification which would cause a substantial change to the site plan or buffer distances. 321.33(P) 30 TAC Chapter 321, Subchapter B

F. Environmental audits.

N/A

G. Type of environmental management systems (EMSs).

N/A

H. Voluntary on-site compliance assessment dates.

N/A

I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A