

Bryan W. Shaw, Ph.D., P.E., *Chairman*  
Toby Baker, *Commissioner*  
Zak Covar, *Commissioner*  
Richard A. Hyde, P.E., *Executive Director*



## TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

*Protecting Texas by Reducing and Preventing Pollution*

September 29, 2014

Bridget Bohac, Chief Clerk  
Texas Commission on Environmental Quality  
Office of the Chief Clerk (MC-105)  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: John's Wood Products, Inc. and MW Dairy Farm, LLC dba The Heifer Farm;  
TPDES Permit No. WQ0005008000;  
TCEQ Docket No. 2014-0958-AGR

Dear Ms. Bohac:

Enclosed for filing is the Executive Director's Response to Requests for Hearing and Reconsideration in the above-titled matter.

Respectfully,

A handwritten signature in cursive script, appearing to read "Hannah Wilchar".

Hannah Wilchar, Staff Attorney  
Environmental Law Division  
State Bar No. 24088631  
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(512) 239-2225  
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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

cc: Mailing List

Enclosure

**TPDES PERMIT NO. WQ0005008000**

**APPLICATION BY BIG JOHN'S  
WOOD PRODUCTS, INC. & MW  
DAIRY FARM, LLC, D.B.A.  
THE HEIFER FARM**

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**BEFORE THE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY**

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**EXECUTIVE DIRECTOR'S RESPONSE TO  
REQUESTS FOR HEARING AND RECONSIDERATION**

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**I. Introduction**

The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Requests for Hearing and Reconsideration (Response) on the application by Big John's Wood Products, Inc. and MW Dairy Farm, LLC (Applicants) for a new dairy replacement Concentrated Animal Feeding Operation (CAFO) individual permit, Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0005008000. Jean Welch submitted two requests for reconsideration (RFR). Jay and Jamie Anthony submitted a request for a contested case hearing (CCH).

Attached for Commission consideration are the following:

Attachment A – Satellite map of the area  
Attachment B – Statement of Basis/Technical Summary and ED's Preliminary Decision  
Attachment C – Draft permit  
Attachment D – ED's Response to Public Comment (RTC)  
Attachment E – Compliance History Reports

**II. Description of the Facility**

Applicants seek authorization to operate a new dairy replacement facility at a previously authorized dairy CAFO site. The proposed permit would authorize Applicants to confine a maximum capacity of 1,525 head, none of which will be milking

cows. The site was previously authorized as a dairy facility under the canceled TPDES Permit No. WQ0003189000.

The facility consists of one retention control structure with a total required capacity without freeboard of 7.09 acre-feet. The facility also includes two land management units (LMUs). LMU #1 is 81 acres and LMU #2 is 28 acres.

The facility is located at 2626 County Road 428, Stephenville, in Erath County, Texas, in the drainage area of the Upper North Bosque River in Segment No. 1255 of the Brazos River basin.

### **III. Procedural Background**

TCEQ received this permit application on January 28, 2013 and declared it administratively complete on March 29, 2013. The Notice of Receipt and Intent to Obtain a Water Quality Permit was published in the *Stephenville Empire Tribune* on April 11, 2013. ED 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 *Stephenville Empire Tribune* on March 7, 2014. Applicants were not required to publish notice in an alternative language because a bilingual education program is not required by the Texas Education Code in the Huckabay Independent School District. The public comment period ended on April 7, 2014. The ED's Response to Comments (RTC) was filed on June 9, 2014 and the final decision letter was mailed on June 12, 2014. The CCH request and RFR period ended on July 14, 2014.

#### **IV. Evaluation of RFRs and CCH**

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 CCH requests. This application was declared administratively complete on March 29, 2013 and, therefore, is subject to the HB 801 requirements. The Commission implemented HB 801 by adopting procedural rules in Title 30 of the Texas Administrative Code (30 TAC) Chapters 39, 50, and 55. The regulations governing requests filed after September 1, 1999 are found at 30 TAC Chapter 55 Subchapters (d)-(g).

##### **A. Response to Requests**

The ED, TCEQ public interest counsel, and the applicant may submit written responses to the requests.<sup>1</sup> Responses to RFRs should address the issues raised in the request.<sup>2</sup> Responses to CCH requests must specifically address:

- (a) whether the requestor is an affected person;
- (b) whether issues raised in the hearing request are disputed;
- (c) whether the dispute involves questions of fact or law;
- (d) whether the issues were raised during the public comment period;
- (e) 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;
- (f) whether the issues are relevant and material to the decision on the application; and

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<sup>1</sup> 30 TAC § 55.209(d).

<sup>2</sup> 30 TAC § 55.209(f).

(g) maximum expected duration for the contested case hearing.<sup>3</sup>

**B. Request for CCH Requirements**

For the Commission to consider a request for CCH, 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

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<sup>3</sup> 30 TAC § 55.209(e).

- (5) provide any other information specified in the public notice of application.

**C. Requirement that Requestor be an Affected Person**

To grant a CCH, 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 (SOAH)**

When the Commission grants a request for a CCH, the Commission shall issue an order specifying the number and scope of the issues to be referred to SOAH for a hearing.<sup>4</sup> The Commission may not refer an issue to SOAH for a CCH unless the

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<sup>4</sup> 30 TAC § 50.115(b).

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.<sup>5</sup>

## **V. Request for CCH Analysis**

### **A. Whether the Request Meets the CCH Requirements**

The Anthony's CCH request was timely filed and includes the relevant information for meeting the requirements for requesting a CCH. Therefore, the ED concludes that Jay and Jamie Anthony's request for CCH substantially complies with the CCH requirements.

### **B. Whether the Requestor Is an Affected Person**

Jay and Jamie Anthony are adjacent landowners to the proposed facility and their property is shown on Applicants' adjacent landowner map. The Anthony's interest in nuisance odor conditions is protected by TCEQ regulations that will govern this operation. The location of the Anthony's property in such close proximity to the facility also gives them an interest not common to the general public. This proximity makes it more likely the operation will potentially impact the Anthony's use and enjoyment of their property. **The ED recommends that the Commission find that Jay and Jamie Anthony are affected persons.**

### **C. Whether Issues Raised Are Referable to SOAH for a CCH**

The ED analyzed the issues raised in accordance with the regulatory criteria and provides the following recommendations regarding the issues. All issues were raised

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<sup>5</sup> 30 TAC § 50.115(c).

during the public comment period. None of the issues were withdrawn. All issues are considered disputed, unless otherwise noted. This Response will individually address whether each issue involves a disputed question of fact and is relevant and material.

**Issue 1: Whether the proposed facility will cause nuisance odor conditions.**

The Anthonys are particularly concerned with the proposed facility's potential to cause nuisance odor conditions. This issue was addressed in Response 1 of the ED's RTC. This issue involves a disputed question of fact and if it can be shown that the facility will not be able to prevent nuisance odor conditions, that information is relevant and material to the decision on the application.

The ED recommends that the Commission refer this issue to SOAH.

**Issue 2: Whether the proposed facility will cause the presence of flies as a nuisance and health hazard to livestock.**

This issue was addressed in Response 1 of the ED's RTC. This issue involves a disputed question of fact; however, it is not relevant or material to the Commission's decision on the application.

The ED asserts that the fly issue is not relevant or material to the application because, according to the definition in 30 TAC § 321.32(32)<sup>6</sup>, flies are not a nuisance condition that the draft permit is required to address. However, as stated in the RTC,

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<sup>6</sup> 30 TAC § 321.32(36) defines "nuisance" as: Any discharge of air contaminant(s), including but not limited to odors, of sufficient concentration and duration that are or may tend to be injurious to or that adversely affects human health or welfare, animal life, vegetation or property, or that interferes with the normal use and enjoyment of animal life, vegetation, or property.

the ED upholds that the odor control best management practices required by the proposed permit should reduce the potential for breeding if properly implemented.

Likewise, the proposed permit is protective of livestock health by containing conditions, which, if followed, prevent an adverse effect on livestock. A standard permit condition requires Applicants to “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.”<sup>7</sup> Furthermore, an air standard permit condition requires Applicants to operate the facility “in such a manner as to prevent a condition of air pollution as defined by Texas Health and Safety Code, 30 TAC § 382.003(3),”<sup>8</sup> which defines air pollution as “the presence in the atmosphere of one or more air contaminants or combination of air contaminants in such concentration and of such duration that are or may tend to be injurious to or to adversely affect ... animal life...”<sup>9</sup>

The ED recommends that the Commission not refer this issue to SOAH.

**Issue 3: Whether the proposed facility will cause property devaluation.**

This issue was addressed in Response 2 of the ED’s RTC. This issue involves a disputed question of fact; however, it is not relevant or material to the Commission’s decision on the application.

TPDES permits establish terms and conditions that are intended to provide water quality pollution control, therefore, the TCEQ’s review of an application for a TPDES permit focuses on controlling the discharge of pollutants into water in the state. Issues

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<sup>7</sup> Draft permit WQ0005008000, Standard Permit Condition D, p. 24.

<sup>8</sup> Draft permit WQ0005008000, Air Standard Permit Requirement 1(a), p. 19.

<sup>9</sup> 30 TAC § 382.003(3)(A).

outside of this scope are not relevant to the Commission's decision on an application for a TPDES permit.

The ED recommends that the Commission not refer this issue to SOAH.

**If the Commission refers this case to SOAH, the ED recommends referring issue #1.**

#### **VI. RFR Analysis**

Two timely RFRs were filed by Jean Welch. The RFRs do not raise any new issues not addressed in the ED's RTC or present any new information not already considered by the ED during the permitting process. **Therefore, the ED recommends denial of the RFRs.**

#### **VII. CCH Duration**

If the Commission determines that this matter should be sent to SOAH for a CCH, the ED recommends that the duration between preliminary hearing and the presentation of a proposal for decision before the Commission be nine months.

#### **VIII. ED's Recommendation**

The ED recommends the following actions by the Commission:

1. Find that Jay and Jamie Anthony are affected persons with a personable justiciable interest in the application;
2. Deny the RFRs filed by Jean Welch; and
3. Refer issue #1 to SOAH for a proceeding of nine months duration from the date of the preliminary hearing and concluding with presentation of a proposal for decision before the Commission.

Respectfully submitted,

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

Richard A. Hyde, P.E., Executive Director

Robert Martinez, Director  
Environmental Law Division



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REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I hereby certify that on September 29, 2014 the “Executive Director’s Response to Requests for Hearing and Reconsideration” relating to the application of Big John’s Wood Products, Inc. and MW Dairy Farm, LLC for TPDES Permit No. WQ0005008000 was filed with the TCEQ Chief Clerk and a copy was served to all persons listed on the attached mailing list via hand delivery, electronic mail, facsimile transmission, inter-agency mail, or by deposit in the U.S. Mail.



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Hannah Wilchar, Staff Attorney  
Environmental Law Division  
State Bar No. 24088631

**MAILING LIST**  
**BIG JOHN'S WOOD PRODUCTS, INC. AND MW DAIRY FARM, LLC, DBA THE**  
**HEIFER FARM**  
**DOCKET NO. 2014-0958-AGR; PERMIT NO. WQ0005008000**

FOR THE APPLICANT:

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**FOR THE CHIEF CLERK:**

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**REQUESTER(S):**

Jamie & Jay Anthony  
Anthony Ranches LLC  
P.O. Box 10  
Ryan, Oklahoma 73565-0010

Jean A. Welch  
3463 County Road 423  
Stephenville, Texas 76401-8863

**INTERESTED PERSON(S):**

Craig Mader  
2165 County Road 423  
Stephenville, Texas 76401-6439

# **ATTACHMENT A**

# Big John's Wood Products, Inc. and MW Dairy Farm, LLC, dba The Heifer Farm - WQ0005008000

TCEQDocket No. 2014-0958-AGR

Map Requested by TCEQ Office of Legal Services  
for Commissioners' Agenda



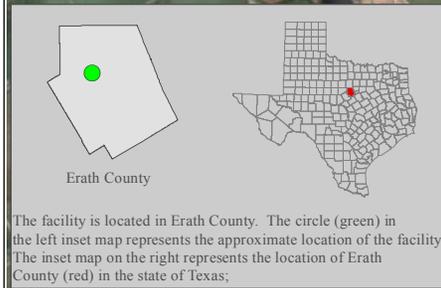
Texas Commission on Environmental Quality  
GIS Team (Mail Code 197)  
P.O. Box 13087  
Austin, Texas 78711-3087

Date: 9/17/2014

0 0.25 0.5 Miles



-  Facility
-  Jay and Jamie Anthony (HR)
-  Jean Welch (RFR)
-  1 mi Radial Buffer from Facility Boundary



Erath County

The facility is located in Erath County. The circle (green) in the left inset map represents the approximate location of the facility. The inset map on the right represents the location of Erath County (red) in the state of Texas;

Source: The location of the facility was provided by the TCEQ Office of Legal Services (OLS). OLS obtained the site location information from the applicant and the requestor information from the requestor. The background imagery of this map is from the current Environmental Systems Research Institute (ESRI) map service, as of the date of this map.

This map was generated by the Information Resources Division of the Texas Commission on Environmental Quality. This product is for informational purposes and may not have been prepared for or be suitable for legal, engineering, or surveying purposes. It does not represent an on-the-ground survey and represents only the approximate relative location of property boundaries. 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

## I. Description of Application

Applicant: Big John's Wood Products, Inc. and MW Dairy Farm, LLC.

Permit No.: WQ0005008000

Regulated Activity: Concentrated Animal Feeding Operation; Dairy Replacement Facility

Permit Action: New

Authorization: Air & Water Quality Authorization

## II. Executive Director Recommendation

The executive director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The proposed permit shall be issued for a 5 year term in accordance with 30 TAC §305.

## III. Reason for Proposed Project

The applicant has applied to the Texas Commission on Environmental Quality (TCEQ) for a new Texas Pollutant Discharge Elimination System Permit No. WQ0005008000 to authorize the permittee to operate a new Dairy Replacement Facility Concentrated Animal Feeding Operation (CAFO) at a maximum of 1,525 head, of which none are milking cows.

## IV. Facility Description and Location

Maximum Capacity: 1525 total head, of which none are milking cows.

Land Management Units (LMUs) (acres): LMU #1-91, LMU #2-28.

Location: The facility is located at 2626 County Road 428, Stephenville, in Erath County, Texas 76401 in Erath County, Texas. Latitude: 32° 18' 11" N Longitude: 98° 18' 11" W.

Drainage Basin: The facility is located in the drainage area of the Upper North Bosque River in Segment No. 1255 of the Brazos River Basin.

The facility consists of one (1) Retention Control Structures (RCSs). The table below indicates the volume allocations for the RCS(s):

**Table 1: Volume Allocations for RCS(s) in Acre-Feet**

RCS #	Design Rainfall Event Runoff	Process Generated Wastewater	Minimum Treatment Volume	Sludge	Water Balance	Required Capacity	Actual Capacity (if existing)
1	6.66	0	0	0.09	0.33	7.09	9.15

## Fact Sheet And Executive Director's Preliminary Decision

Big John's Wood Products, Inc and MW Dairy Farm, LLC, Permit No. WQ0005008000

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

The Design Rainfall Event is the volume of runoff from the 25 year, 10 day storm event. The RCS is required to include adequate capacity to contain this amount of runoff as a margin of safety to protect against discharges during rainfall events that may exceed the average monthly values used to design the RCS, but do not constitute chronic or catastrophic rainfall. This volume allocation accommodates runoff from open lot surfaces, all areas between the open lots and the RCS, runoff from roofed areas that contribute to the RCS and direct rainfall on the surface of the RCS. Runoff curve numbers used to calculate the runoff volume from the open lot surfaces are reflective of the characteristics of open lot surfaces and range between 90 and 95. Runoff curve numbers used to compute the runoff from areas between the open lots and the RCS are reflective of the land use and condition of the areas between the open lots and RCS. A curve number of 100 is used for the RCS surface and all roofed areas.

Process Generated Wastewater is the volume of wet manure and wastewater generated by the facility that is flushed or otherwise directed to the RCS. Wastewater includes all water used directly or indirectly by the facility that comes in contact with manure or other waste. RCS #1 is not required to contain process generated wastewater because no process generated wastewater is produced by the facility.

This facility is not required to maintain a treatment volume in the RCS because no process generated wastewater is produced by the facility.

The sludge accumulation volume allocated for runoff from open lots is calculated using USDA Agricultural Field Waste Handbook, Kansas, Part 651.1083, which uses the following equation:  $(\%SC) \times (MAR) \times (DA) \times (SP)$ , where %SC = percent solids content of runoff, MAR = mean annual runoff (in inches), DA = contributing drainage area (in acres), and SP = sediment storage period (in years). A minimum of one year of sludge storage is required in the RCS. Design sludge volumes in this permit reflect a five (5) year sludge accumulation period.

The RCS volume designated as Water Balance is the capacity needed in addition to the Process Generated Wastewater volume to provide adequate operating capacity so that the operating volume does not encroach into the design storm volume. The water balance is an analysis of the inflow into the RCS, all outflows from the RCS and the consumptive use requirements of the crops on the land areas being irrigated. The water balance is developed on a monthly basis. It estimates all inflows into the RCS including process generated wastewater and runoff from open lots, areas between open lots and the RCS, roofed areas and direct rainfall onto the RCS surface. Consumptive use potential for the areas to be irrigated is developed based on the potential evapotranspiration of the crops and the effective average monthly rainfall on the area to be irrigated. Runoff curve numbers used for the water balance are adjusted from 1 day to 30 day curve numbers to more accurately reflect monthly values. Evaporation from the RCS surface is computed on a monthly basis. Monthly withdrawals from the RCS are developed based on the total

inflow to the RCS minus evaporation from the RCS surface and limited by the monthly crop consumptive use potential.

**V. Summary of Changes from Existing Authorization**

The permittee is requesting authorization for a new permit to operate a previously authorized CAFO as a Dairy Replacement Facility at a maximum capacity of 1,525 head. The CAFO site was authorized as a dairy facility under the canceled TPDES Permit No. WQ0003189000.

**VI. Proposed Permit Conditions and Monitoring Requirements**

**A. Effluent Limitations**

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:

- discharge resulting from a catastrophic condition other than a rainfall event that the permittee cannot reasonably prevent or control;
- a discharge resulting from a catastrophic rainfall event from a RCS;
- a discharge resulting from a chronic rainfall event from a RCS; or
- 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.

40 Code of Federal Regulations §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 the 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:

- existing controls on point and non-point sources of pollution;
- variability of the pollutant in the effluent; and
- 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)). The general and site specific provisions which are expected to result in compliance with water quality criteria and protection of attainable water quality are discussed in the following sections of this fact sheet: RCS Design and Operational Requirements; Requirements for Beneficial Use of Manure, Sludge, and Wastewater; Additional Water Quality Requirements; and Monitoring and Reporting Requirements.

**B. RCS Design and Operational Requirements**

The draft permit includes the following requirements related to proper RCS design, construction, operation and maintenance:

1. The RCS(s) must 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, at which time the CAFO is authorized to discharge, is 11.8 inches. The application includes design calculations, certified by a professional engineer, which determine the design criteria for the RCS(s).
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 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.

4. The wastewater level in the RCS(s) 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.
5. The amount of sludge in the RCS(s) must be maintained at or below the designed sludge volume. Proper sludge management will reduce overflows associated with insufficient wastewater storage capacity. This permit requires that sludge accumulations in the RCS(s) be measured at least annually beginning in year three (3) of the permit.
6. The RCS(s) must be adequately lined and certified by a professional engineer; alternatively, certification must document that in situ material meets the requirements of constructed and installed liners. 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 the existing RCS(s) was submitted with the application.

**Table 2: Existing RCS Liner Certification(s)**

<b>RCS #</b>	<b>Liner Certification Date</b>
RCS # 1	May 22, 2006

7. The RCS(s) 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. RCS(s) without spillways must have a minimum of two vertical feet between the top of the embankment and the required storage capacity.
8. The entry of uncontaminated stormwater runoff into RCS(s) must be minimized. The site includes diversion structures to both direct contaminated runoff into the RCS(s) and prevent uncontaminated stormwater runoff from entering the RCS(s).

**C. Requirements for Beneficial Use of Manure, Sludge, and Wastewater**

Nutrient pollutants of concern have narrative criteria and are discharged in CAFO wastewater. Nutrient pollutants have been addressed through imposition of BMPs. No water quality impacts are expected to occur from land application based upon properly prepared and implemented nutrient management practices. The proposed permit contains requirements related to the collection, handling, storage and beneficial use of manure, wastewater, and sludge. These requirements were established based on TCEQ rules, Environmental Protection Agency guidance, NRCS Field Operations Technical Guidance and the Animal Waste Management Field Handbook,

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recommendations from the TCEQ's Water Quality Assessment Team, and best professional judgment.

1. For LMUs with a soil phosphorus concentration of less than 200 ppm in Zone 1 (0-6 inches) depth, land application of commercial fertilizer, wastewater must be in accordance with a certified nutrient management plan. This plan is based on the NRCS Practice Standard Code 590. This plan involves a site specific evaluation of the LMU to include soils, crops, nutrient need 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, runoff class, and soil erosion potential. The application rates are adjusted according to the risk potential. The higher the risk potential, the lower the application rate; thus there is minimal potential to have excess nutrients available to leave the site and affect water quality.
2. For LMUs with a soil phosphorus concentration of 200-500 ppm in Zone 1 (0-6 inches) depth, land application of commercial fertilizer, wastewater must be in accordance with a nutrient utilization plan. The nutrient utilization plan is a revised nutrient management plan based on crop removal. A crop removal application rate is the amount of nutrients contained in and removed by the proposed crop. 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.
3. For LMUs with a soil phosphorus concentration of greater than 500 ppm in Zone 1 (0-6 inches) depth, land application of commercial fertilizer, wastewater must be in accordance with a nutrient utilization plan based on crop removal which also includes a phosphorus reduction component. A phosphorus reduction component is a management practice, incorporated into the nutrient utilization plan, which 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 twelve (12) months or may be subject to enforcement actions.
4. The table below identifies the maximum application rate, as shown in the NMP submitted in the permit application. NMPs are routinely updated and the values shown below are subject to change.

**Table 3: LMU Maximum Application Rates and Soil Phosphorus Levels**

<b>LMU #</b>	<b>Soil Test P (ppm)</b>	<b>Max Annual P<sub>2</sub>O<sub>5</sub> (lbs/ac)</b>
1	119	256
2	189	256

5. All generated manure, sludge or wastewater in excess of the amount allowed by the nutrient management plan or nutrient utilization 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, subject to specified land application requirements and testing. By requiring specific outlets for excess manure, sludge and wastewater, the permit limits unregulated use of manure, sludge and wastewater within the watershed.
6. The permittee must continue to operate under a Comprehensive Nutrient Management Plan (CNMP) certified by the Texas State Soil and Water Conservation Board (TSSWCB). The CNMP must be developed by a qualified individual(s) in accordance with TSSWCB regulations. 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 the facility, and manure removed from the facility. Losses include volatilization, stormwater runoff, and leaching.
7. The permittee must implement additional conservation practices 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.
8. In the table below, the Additional Buffer Setback length was determined by using the NRCS Conservation Practice Code 393, Filter Strip. The practice code uses a combination of hydrologic soil groups and field slope percentages to calculate an appropriate filter strip length.

**Table 4: Buffer Distances for each LMU**

<b>LMU #</b>	<b>Vegetative Buffer Setback (feet)</b>	<b>Additional Buffer Setback NRCS Code 393 Filter Strip flow length (feet)</b>
1	100	33
2	100	33

9. 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.
10. 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 plan or nutrient utilization plan.

**D. Additional Water Quality Requirements**

The approved recharge feature certification submitted in the permit application 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.

**Table 5: Soil Limitations**

<b>Soil Series and Map ID</b>	<b>Potential Limitations</b>	<b>BMPs*</b>
By: Bunyan	Flooding	Maintain buffer from creek as approved by TCEQ No land application to inundated areas Maintain cover crop in LMUs Land application according to the NMP

The table below lists all wells on the facility, their status, and what measure will be taken to protect groundwater. A Well Buffer Exception request for Well #2 was submitted to and approved by the TCEQ Water Quality Assessment Team.

**Table 6: Water Well Protection**

<b>Well Number</b>	<b>Status</b>	<b>BMPs</b>
1	Producing	Maintain 150 ft buffer
2	Producing	Concrete slab and covered shed around the well head
3	Producing	Not on property. Maintain 150 ft buffer
4	Non-Producing	To Be Plugged
5	Non-Producing	Plugged

**E. Monitoring and Reporting Requirements**

1. The permittee is required to report all discharges to TCEQ. 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. For any discharges, grab samples must be collected and analyzed for Biochemical Oxygen Demand, Total and Fecal Coliform, Total Dissolved Solids, Total Suspended Solids, Nitrate, Total Phosphorus, Ammonia Nitrogen and pesticides (if suspected).
2. 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.
3. Soil samples must be taken annually from LMUs and analyzed for Nitrate, Phosphorus, Potassium, Sodium, Magnesium, Calcium, Soluble salts/electrical conductivity, and pH. The results are used in the NMP to determine land application rates. 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 AgriLife Extension; or an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas. The TCEQ Regional Office must be notified ten (10) days prior to annual soil sample collection activities. The permittee is required to submit soil analyses to TCEQ.

4. The permittee is required to annually collect and analyze at least one (1) representative sample of wastewater, sludge (if applicable), or manure for total nitrogen, total phosphorus, and total potassium. The results are used in the NMP to determine land application rates.
5. Some of the land application records maintained by the permittee must be submitted to the TCEQ annually. These records include: date of 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 wastewater is applied; basis for and the total amount of nitrogen and phosphorus applied per acre to each LMU, including sources of nutrients and amount of nutrients on a dry weight basis other than wastewater; weather conditions, such as temperature, precipitation, and cloud cover, during the land application and twenty-four (24) hours before and after the land application.
6. Other recordkeeping 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 wastewater land applied.

## **VII. 303(D) Listing and Total Maximum Daily Load (TMDL)**

The facility for this permit action is located within the watershed of the Upper North Bosque River in Segment No. 1255 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 Texas Administrative Code §307.10) for Segment No. 1255 are contact recreation, intermediate aquatic life use, and 4.0 mg/L dissolved oxygen.

Segment No. 1255 is currently listed on the State's inventory of impaired and threatened waters (the 2012 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. 1255 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 (I-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, i.e. 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

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other sources, such as CAFOs. The TMDL called for an average 50% reduction in the average concentration of 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 I-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.

Primary management strategies for dairies, both voluntary and regulatory, were identified in the I-Plan which included: phosphorus-based application rates in LMUs, voluntarily measures to reduce the amount of phosphorus in dairy cow diets, voluntarily removing 50% of dairy-generated manure from the watershed, more stringent RCS design requirements to reduce the potential for overflows from RCSs, evaluation of chronic rainfall and incidences of RCS overflows, additional tailwater requirements, additional protective measures to prevent runoff caused by excessive irrigation, CNMPs, educational requirements for dairy operators and employees.

The proposed permit includes the following requirements to address the recommendations in the I-Plan:

- RCS(s) designed and constructed for 25 year, 10 day rainfall event
- RCS management plan
- pond marker with one foot increments
- daily recordkeeping of wastewater levels
- chronic rainfall discharge notification, including records that substantiates that the overflow was a result of cumulative rainfall that exceeded the design rainfall event without the opportunity for dewatering
- NMP and NUP based on phosphorus risk index
- CNMP
- specific outlets for excess manure, sludge and wastewater
- additional record-keeping for exported manure, sludge and wastewater to track each permittee's contribution toward the 50% voluntary removal goal in the Bosque River Total Maximum Daily Load (TMDL)

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- prohibition of discharges from LMUs, except as related to imminent overflow
- minimize ponding and puddling of wastewater and prevent tailwater discharges
- additional conservation practices between land application areas and waters in the state
- prohibition of land application between 12 a.m. and 4 a.m.
- automatic shutdown or alarm system may be required if unauthorized discharge occurs from irrigation system
- employee and operator required training related to land application of manure, sludge, and wastewater, proper operation and maintenance of the facility, good housekeeping, material management practices, recordkeeping requirements, and spill response and clean up

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.

The RCS storage capacity requirements, nutrient management practices, increased TCEQ oversight of operational activities, and requirements of the I-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 phosphorus load reduction in the watershed and achieve the reductions targeted in the TMDL. The draft permit provisions are consistent with the approved TMDL and I-Plan that establish measures for reductions in loading of phosphorus (and consequently other potential pollutants) to the North Bosque River Watershed. Therefore, the draft 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.

### **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 Pollutant 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 thirty (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.

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.

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For additional information about this application, contact Joy Alabi at (512)239-1318.

**X. Administrative Record**

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

- TPDES Permit No. WQ0003189000 (EPA ID No. TX0131270) issued November 07, 2007.
- The application received on January 28, 2013 and subsequent revisions.
- Interoffice Memoranda from the Water Quality Assessment Team, Water Quality Assessment Section, Water Quality Division, June 27, 2013.
- Interoffice Memorandum from the Standards Implementation Team, Water Quality Assessment Section, Water Quality Division, dated December 20, 2013.
- Bosque River TMDL Implementation Plan.
- Federal Clean Water Act - Section 402; Section 382.051 of the Texas Clean Air Act; Texas Water Code §26.027; 30 TAC §39, §305, §321 Subchapter B; Commission Policies; and EPA Guidelines.
- Texas 2012 Clean Water Act Section 303(d) List, Texas Commission on Environmental Quality, February 13, 2013; approved by EPA on May 9, 2013.
- NRCS Animal Waste Management Field Handbook and Field Office Technical Guidance for Texas.
- NRCS, ASABE and ASTM Standards.

# **ATTACHMENT C**



TPDES Permit No. WQ0005008000

[For TCEQ use only EPA ID No. TX0134295]

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 and  
Section 382.051 of the Texas Clean Air Act

**I. Permittee:**

- A. Owner** Big John's Wood Products, Inc. and MW Dairy Farm, LLC
- B. Operator** Alan Vander Horst
- C. Business Name** The Heifer Farm
- D. Owner Address** P. O. Box 389  
Dublin, Texas 76446

**II. Type of Permit:** New / Air & Water Quality

**III. Nature of Business Producing Waste:** Concentrated Animal Feeding Operation (CAFO): Dairy Replacement Facility; SIC No. 2410

**IV. General Description and Location of Waste Disposal System:**

Maximum Capacity: 1,525 total head, of which none are milking cows

Site Plan: See Attachment A.

Retention Control Structures (RCSs) total required capacities without freeboard (acre-feet): RCS #1 – 7.09.

Land Management Units (LMUs) (acres): LMU #1-91, LMU #2-28; See Attachment B for locations.

Terms of the Nutrient Management Plan (NMP): See Attachments E and F.

Location: The facility is located at 2626 County Road 428, Stephenville, in Erath County, Texas. Latitude: 32° 18' 11" N Longitude: 98° 18' 11" W. See Attachment C.

Drainage Basin: The facility is located in the drainage area of the Upper North Bosque River in Segment No. 1255 of the Brazos River Basin.

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

ISSUED DATE:

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For the Commission

**V. Rule and Statute Applicability**

- A. Definitions.** All definitions in Chapter 26 of the Texas Water Code, 30 Texas Administrative Code (TAC) Chapters 305 and 321, Subchapter B shall apply to this permit and are incorporated by reference.
- B. Amendments, Renewals, transfers, corrections, revocation, and suspension of permit.** The requirements in 30 TAC Chapter 305, Subchapter D applies to this permit.

**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 Chapter 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.
- C. Air Quality Authorization.** The permittee shall comply with the requirements listed in Section VII.D. of this permit and shall maintain a copy of the odor control plan in the Pollution Prevention Plan.

**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;

- (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; dead animal burial sites; RCSs or other control facilities; LMUs; water wells, abandoned and in use, which are on-site or within 500 feet of the facility boundary; and all springs, lakes, or ponds located on-site or within one mile of the facility boundary.
  - (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(s).
- (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 submitted in the permit application shall be implemented, updated by the permittee as often as necessary, and maintained in the PPP.
  - (5) 100-year Floodplain. All control facilities, including holding pens and RCSs, shall be located outside of the 100-year floodplain or protected from inundation and damage that may occur during the flood.

- (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 pesticides in accordance with label instructions. There shall be no disposal of 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 (25-year frequency 10 day duration (25-year/10-day)), constructed, operated and maintained RCS whenever chronic or catastrophic rainfall, 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 all discharges from the RCS(s) and LMU(s). The effluent shall be analyzed by a National Environmental Laboratory Accreditation Conference (NELAC) accredited lab for the parameters shown in Table 1.

**Table 1: Monitoring Requirements**

<b>Parameter</b>	<b>Sample Type</b>	<b>Sample Frequency</b>
BOD <sub>5</sub>	Grab	1/day <sup>1</sup>
Total Coliform <sup>3</sup>	Grab	1/day <sup>1</sup>
Fecal Coliform <sup>3</sup>	Grab	1/day <sup>1</sup>
<i>Escherichia coli</i>	Grab	1/day <sup>1</sup>
Total Dissolved Solids (TDS)	Grab	1/day <sup>1</sup>
Total Suspended Solids (TSS)	Grab	1/day <sup>1</sup>
Nitrate (N)	Grab	1/day <sup>1</sup>
Total Phosphorus	Grab	1/day <sup>1</sup>
Ammonia Nitrogen	Grab	1/day <sup>1</sup>
Pesticides <sup>2</sup>	Grab	1/day <sup>1</sup>

<sup>1</sup> Sample shall be taken within the first thirty (30) minutes following the initial discharge and then once per day while discharging.

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

<sup>3</sup>30 TAC 321 requires monitoring fecal and total coliform in the permit. Two years after adoption of the rule, permittees will replace monitoring these with E. coli.

- (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 the RCS(s) is certified by a licensed Texas Professional Engineer prior to use. The certification shall be signed and sealed in accordance with the Texas 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 Table 2 shows the current RCS liner and capacity certifications.

**Table 2: Current liner and capacity certifications**

<b>RCS #</b>	<b>Liner Certification Date</b>	<b>Capacity Certification Date</b>	<b>Certified Capacity in Acre-Feet</b>
1	May 22, 2006	December 6, 2012	9.15

- (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 and Biological 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 stormwater into the RCS(s).
  - (2) Stormwater must be diverted, as indicated in Attachment A – Runoff Control Map from contact with feedlots and holding pens, and manure and/or process wastewater storage systems. In cases where it is not feasible to divert stormwater from the production area, the retention structures shall include adequate storage capacity for the additional stormwater. Stormwater includes rain falling on the roofs of facilities, runoff from adjacent land, or other sources.

- (3) The permittee shall maintain the drainage area to minimize ponding or puddling of water outside the RCS(s).
- (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.** Each RCS authorized under this 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 11.8 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.
- (e) **Irrigation Equipment Design.** The permittee shall ensure that the irrigation system design is capable of removing wastewater from the RCS(s) on a regular schedule. Equipment capable of dewatering the RCS(s) shall be available and operational whenever needed to restore the operating capacity required by the RCS management plan.
- (f) **Embankment Design and Construction.** The RCS(s) have a depth of water impounded against the embankment at the spillway elevation of three feet or more, therefore the RCS(s) 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 all new construction and/or the modified portions of existing RCSs.
  - (1) **Soil Requirements.** Soils used in the embankment shall be free of foreign material such as rocks larger than four (4) inches, trash, brush, and fallen trees.
  - (2) **Embankment Lifts.** The embankment shall be constructed in lifts or layers no more than eight (8) inches compacted to six (6) inches thick at a minimum compaction effort of 95 per cent (%) 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) D1556, D2167 or D2937 for density and D2216, D4643, D4944 or D4959 for moisture, or D6938 for moisture and density or equivalent testing standards. Compaction

- tests will provide support for the liner certification performed by a licensed Texas professional engineer as meeting a permeability no greater than  $1 \times 10^{-7}$  centimeters per second (cm/sec) over a thickness of 18 inches or its equivalency in other materials.
- (5) **Spillway or Equivalent Protection.** The RCS(s), which are constructed with embankments, shall be constructed with a spillway or other outflow device properly sized according to NRCS design and specifications to protect the integrity of the embankment.
  - (6) **Embankment Protection.** The RCS(s) must have a minimum of two (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. RCS(s) without spillways must have a minimum of two (2) vertical feet between the top of the embankment and the required storage capacity.
  - (g) **RCS Liner Requirements.** For all new construction and for all structural modifications of existing RCS(s), the RCS must have a liner consistent with one of the following:
    - (1) **In-situ Material.** In-situ material is undisturbed, in-place, native soil material. In-situ materials must at least meet the minimum criteria for hydraulic conductivity and thickness and specific discharge as described in Section VII.A.3(g)(2) of this permit. Samples shall be collected and analyzed in accordance with Section VII.A.3(g)(3) of this permit. This documentation must be certified by a licensed Texas professional engineer or licensed Texas professional geoscientist.
    - (2) **Constructed or Installed Liner.**
      - (i) Constructed or installed liners must be designed by a licensed Texas professional engineer. The liner must be constructed in accordance with the design and certified as such by a licensed Texas professional engineer. Compaction tests and post construction sampling and analyses, conducted in accordance with Sections VII.A.3(f)(4) and VII.A.3(g)(3) of this permit, will provide support for the liner certification.
      - (ii) Liners shall be designed and constructed to have hydraulic conductivities no greater than  $1 \times 10^{-7}$  centimeters per second (cm/sec), with a thickness of 18 inches or its equivalency in other materials, and not to exceed a specific discharge through the liner of  $1.1 \times 10^{-6}$  cm/sec with a water level at spillway depth.
      - (iii) Constructed or installed liners must be designed and constructed to meet the soil requirements, lift requirements, and compaction testing requirements as listed in Section VII.A.3(f)(1), (2) and (4) of this permit.
    - (3) **Liner Sampling and Analyses.**
      - (i) The licensed Texas professional engineer or licensed Texas professional geoscientist shall use best professional practices

to ensure that corings or other liner samples will be appropriately plugged with material that also meets liner requirements of this subsection.

- (ii) Samples shall be collected in accordance with ASTM D1587 or other method approved by the executive director. For each RCS, a minimum of two core samples collected from the bottom of the RCS and a minimum of at least one core sample from each sidewall shall be collected. Additional samples may be necessary based on the best professional judgment of the licensed professional engineer. Distribution of the samples shall be representative of liner characteristics, and proportional to the surface area of the sidewalls and floor. Documentation shall be provided identifying the sample locations with respect to the RCS liner.
  - (iii) Undisturbed samples shall be analyzed for hydraulic conductivity in accordance with ASTM D5084 or other method approved by the Executive Director.
  - (4) 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 a 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 RCS(s). An existing RCS that has been properly maintained without any modifications and has no apparent structural problems or leakage is considered to be properly designed with respect to the embankment design and construction and liner requirements of this permit, provided that any required documentation was completed in accordance with the requirements at the time of construction. If no documentation exists, the RCS must be certified by a licensed professional Texas engineer as providing protection equivalent to the requirements of this permit.
5. Operation and Maintenance of RCSs
- (a) RCS Operation and Maintenance
    - (1) The permittee must operate and maintain a margin of safety in the RCS(s) to contain the volume of runoff and direct precipitation from the 25 year/10 day) rainfall event.
    - (2) The permittee shall implement a RCS management plan incorporating the margin of safety developed by a licensed Texas professional engineer. The management plan shall become a component of the PPP, shall be developed for each RCS, 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 each 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 the RCS shall be maintained at or below the maximum operating level expected during that month, according to the design of the RCS. When rainfall volumes exceed average rainfall data used in design calculations planned end of month storage volumes may encroach into the design storm event storage provided that documentation is available to support that the design parameters have been exceeded and that the RCS is otherwise being managed according to the RCS management plan criteria. In circumstances where the 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 the 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 the LMU(s) only to the extent necessary to prevent overflow from the RCS. If irrigation results in a discharge from a 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 the RCS(s), visible from the top of the levee to show the following:
- (i) the volume for the design rainfall event;
  - (ii) one-foot increments beginning from the predetermined minimum treatment volume of the RCS, or the bottom of the

- RCS for those without treatment volume, to the top of the embankment or spillway; and
- (iii) design volume levels for maximum sludge accumulation and operating volume (calculated process generated wastewater plus rainfall runoff minus evaporation) must be identifiable on the marker.
- (6) Rain Gauge. A rain gauge capable of measuring the design rainfall event shall be kept on site and properly maintained.
  - (7) Sludge Removal. The permittee shall monitor sludge accumulation and depth, based upon the design sludge storage volume in the RCS. (See Special Provision X.E for additional requirements related to sludge monitoring.) Sludge shall be removed from the RCS(s) 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 LMU if in accordance with a nutrient management plan or disposed of in accordance with Section VII.A.8(e) of this permit.
  - (8) Liner Protection and Maintenance. The permittee shall maintain the liner 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 a RCS will no longer be used and/or when the CAFO ceases or plans to cease operation. The closure plan shall be submitted to the appropriate regional office and the CAFO Permits Team of the Water Quality Division in Austin (MC-150) within ninety (90) days of when operation of the CAFO or the RCS terminates. 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 AgriLife 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 in the application.

- (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 twenty four (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, §58.31 (b), and §59.12. The collection area for carcasses shall be addressed in the potential pollutant sources section of the PPP with the 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.I 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 thirty (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. Storage for more than thirty (30) days is prohibited in the 100-year floodplain.
  - (4) Temporary storage of manure or sludge shall not exceed thirty (30) days and is allowed only in a RCS drainage area. Temporary storage of manure and sludge in the 100-year floodplain, 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 is prohibited on this CAFO unless this permit is amended to include composting requirements.

7. Site Specific Conservation Practices

(a) Well Protection Requirements

- (1) The permittee shall not locate or operate a new RCS, holding pen, or LMU within the following buffer zones:
  - (i) public water supply wells 500 feet;
  - (ii) wells used exclusively for private water supply 150 feet; or
  - (iii) wells used exclusively for agriculture irrigation 100 feet.
- (2) Irrigation of wastewater directly over a well head will require a structure protective of the wellhead that will prevent contact from irrigated wastewater.
- (3) Construction of any new water wells must be done by a licensed water well driller.
- (4) All abandoned and unuseable wells shall be plugged according to 16 TAC §76.702.
- (5) 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. A Well Buffer Exception request for Well #2 was submitted to and approved by the TCEQ Water Quality Assessment Team. Table 3 shows the status of all wells on the facility and the best management practices (BMPs) used to protect them.

**Table 3: Well Status and Best Management Practices**

<b>Well Number</b>	<b>Status</b>	<b>BMPs</b>
1	Producing	Maintain 150 ft buffer
2	Producing	Concrete slab and covered shed around the well head
3	Producing	Not on property. Maintain 150 ft buffer
4	Non-Producing	To Be Plugged
5	Non-Producing	Plugged

\*Well Numbers correspond with Attachment D

(b) Soil Limitations

<b>Soil Series and Map ID</b>	<b>Potential Limitations</b>	<b>BMPs*</b>
By: Bunyan	Flooding	Maintain buffer from creek as approved by TCEQ No land application to inundated areas Maintain cover crop in LMUs Land application according to the NMP

\*or an equivalent protective measure identified in an NRCS Practice Standard.

(c) Pollutant Sources and Management

<b>Potential Pollutant Source</b>	<b>BMPs*</b>
Dead Animals	Disposed by a third party rendering service Collected within 24 hours of death and disposed within three days of death
Pesticides/Herbicides	Store under roof Handle and dispose according to label direction

\*or an alternative BMP as allowed by 30 TAC 321 Subchapter B or an equivalent protective measure identified in an NRCS Practice Standard.

8. Land Application

- (a) Nutrient Management Plan (NMP) Required. The certified NMP submitted in the permit application shall be implemented upon issuance of this permit. The plan shall be updated as appropriate or at a minimum of annually according to NRCS Practice Standard Code 590. The permittee shall make available to the Executive Director, upon request, a copy of the site specific NMP and documentation of the implementation.
  - (1) For Terms of the NMP see Attachments E and F.
  - (2) The following changes to the terms of the NMP are substantial:
    - (i) Increase in animal headcount;
    - (ii) Increase in LMU acreage or a change in LMU location;
    - (iii) Change in crop and yield goal (not listed in Attachment F);
  - (3) Substantial and Non-Substantial Change to the terms of the NMP
    - (i) Any changes (substantial or non-substantial) to the NMP, other than the Annual Recalculation of Application Rates outlined in Attachment E, must be submitted to the Executive Director for review, and may be subject to public comment;
    - (ii) If the Executive Director determines that the changes to the NMP are not substantial, the revised NMP will be made publicly available and included in the permit record; and
    - (iii) If the Executive Director determines that the changes to the NMP are substantial, the information provided by the permittee will be subject to a major amendment process as set in 30 TAC §§ 305.61-305.72.
- (b) Comprehensive Nutrient Management Plan (CNMP) required. The permittee must continue to operate under a CNMP certified by the Texas State Soil and Water Conservation Board.
- (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) 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 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.
  - (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 AgriLife 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) 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 inch) 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. The permittee shall not apply wastewater within the buffer distances as noted on Attachment B and Special

Provision X.D. Vegetative buffers shall be maintained in accordance with NRCS Field Office Technical Guidance. The permittee shall maintain the filter strip (according to NRCS Code 393) between the vegetative buffer and the land application area. 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 buffer distances required by this permit.

- (2) Water Wells. The permittee shall comply with the well protection requirements listed in Section VII.A.7.
- (e) Exported wastewater, sludge, and/or manure. **The use of third-party fields located within the major sole source impairment zone is not authorized by this permit.** Wastewater, sludge, and/or manure 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;
  - (3) beneficial use by land application to land located outside of the major sole source impairment zone; or
  - (4) put to another beneficial use approved by the Executive Director; or  
(iv)
- (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 wastewater is prohibited from the LMU(s), unless authorized under Section VII.A.5(a)(4).
    - (ii) Where wastewater is applied in accordance with the nutrient management plan and/or NUP, precipitation-related runoff from the LMU(s) 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 one quarter (0.25) of a mile from the

outer boundary of the actual area receiving wastewater application. In areas with an occupied residence within one quarter (0.25) of a mile from the outer boundary of the actual area receiving wastewater application, application shall only be allowed from one (1) hour after sunrise until one (1) hour before sunset, unless the current occupant of such residences have, in writing, agreed to specified nighttime applications.

- (2) Land application of wastewater is prohibited between 12 a.m. and 4 a.m. during normal operating conditions.

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 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 wastewater application to the LMU(s), the permittee shall have at least one representative soil sample from each LMU, collected and analyzed according to the following procedures.

- (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 Concentrated Animal Feeding Operations (CAFOs) (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 AgriLife 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 timeframe 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: 0-6 inches; and

- (B) Zone 2: 6-24 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 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 RCSs, storm water diversion devices, runoff diversion structures, control devices for management of potential pollutant sources, and devices channeling contaminated storm water to RCSs; and
      - (ii) equipment used for land application of 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 the LMU(s).

- (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; and
    - (C) the controls outlined in the PPP to reduce pollutants and avoid nuisance conditions are being implemented and are adequate.
  - (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 and appropriate updates;
  - (c) a copy of the comprehensive nutrient management plan, nutrient management plan, nutrient utilization plan and appropriate updates to these plans, if required;
  - (d) the RCS liner certification(s);
  - (e) any written agreement with a landowner which documents the allowance of nighttime application of 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; and
  - (h) the capacity of each RCS as certified by a licensed Texas professional engineer;

## **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. Animal 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 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 RCS(s), required LMU(s), 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 post harvest 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.

**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, and 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, and 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 at least eight (8) hours of continuing education in animal waste management or its equivalent, developed by the Executive Director and the Texas AgriLife 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.

**D. Air Standard Permit Requirements**

1. Air emission limitations.
  - (a) Facilities shall be operated in such a manner as to prevent the creation of a nuisance as defined by Texas Health and Safety Code, 30 TAC §§341.011 and 321.32(32), and as prohibited by 30 TAC §101.4. Facilities shall be operated in such a manner as to prevent a condition of air pollution as defined by Texas Health and Safety Code, 30 TAC §382.003(3).
  - (b) The permittee shall take necessary action to identify any nuisance condition that occurs. The permittee shall take action to abate any nuisance condition as soon as practicable or as specified by the Executive Director.

2. Wastewater treatment. Treatment to minimize odors is not required for this facility because no process generated wastewater is produced.
3. Dust Control. To minimize dust emissions, the CAFO shall be operated and maintained as follows:
  - (a) Fugitive emissions from all grain receiving pits, where a pit is used, shall be minimized through the use of "choke feeding" or through an equivalent method of control. If choke feeding is used, operation of conveyors associated with receiving shall not commence until the receiving pits are full.
  - (b) As necessary, emissions from all in-plant roads, truck loading and unloading areas, parking areas, and other traffic areas shall be controlled with one or more of the following methods to minimize nuisance conditions and maintain compliance with all applicable commission requirements:
    - (1) sprinkled with water;
    - (2) treated with effective dust suppressant(s); or
    - (3) paved with a cohesive hard surface and cleaned.
  - (c) All non-vehicular external conveyors or other external conveying systems associated with the feedmill shall be enclosed.
  - (d) On-site feed milling operations with processing equipment using a pneumatic conveying system (which may include, but are not limited to, pellet mill/pellet cooler systems, flaker systems, grinders, and roller-mills) shall vent the exhaust air through a properly-sized high efficiency cyclone collector or an equivalent control device before releasing the exhaust air to the atmosphere. This requirement does not include cyclones used as product separators.
  - (e) If the Executive Director determines that the implementation and employment of these practices is not effective in controlling dust, the permittee shall implement any necessary additional abatement measures to control and minimize this contaminant within the time period specified by the Executive Director.
4. Maintenance and Housekeeping. The permittee shall comply with the following to help prevent nuisance conditions.
  - (a) The premises shall be maintained to prevent the occurrence of nuisance conditions from odors and dust. Spillage of any raw products or waste products causing a nuisance condition shall be picked up and properly disposed of daily.
  - (b) Proper pen drainage shall be maintained at all times. Earthen pen areas shall be maintained by scraping uncompacted manure and shaping pen surfaces as necessary to minimize odors and ponding.

## **VIII. Recordkeeping, Reporting, and Notification Requirements**

- A. **Recordkeeping.** The permittee shall keep records on site for a minimum of five (5) years from the date the record was created and shall submit them within five (5) 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 each RCS, as shown on the depth marker. In circumstances where a 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 wastewater, sludge, and/or manure 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 wastewater applied on the LMU(s). Such records must include the following information:
    - (i) date of wastewater application to each LMU;
    - (ii) location of the specific LMU and the volume applied during each application event;
    - (iii) acreage on which wastewater is applied;
    - (iv) basis for and the total amount of nitrogen and phosphorus applied per acre to each LMU on a dry basis, including sources of nutrients other than wastewater; 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.
4. The permittee shall update records annually to include:
  - (a) annual nutrient analysis for at least one representative sample of wastewater and one representative sample of manure for total nitrogen, total phosphorus, and total potassium;
  - (b) any initial and annual soil analysis reports;
  - (c) the annual site inspection report;
  - (d) percent moisture content of the manure, sludge, and wastewater; and
  - (e) actual annual yield of each harvested crop for each LMU.
5. The Five Year Evaluation report must be updated every five (5) 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 calculations 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 (10) days before cleaning. The permittee shall also provide written verification of completion to the same regional office within five (5) days after the cleaning has been completed. This paragraph does not apply to the 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 (10) working days before collecting soil samples from current and historical LMUs.
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 of discovery; unless it is not reasonably possible to do so in which event the discharge shall be reported as soon as reasonably possible, but in no event later than 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; and
  - (d) discharge monitoring analyses required by this permit.
4. In the event of a discharge of manure, sludge, or wastewater 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 (1) hour of the discovery of the discharge. The permittee shall send written notification to the appropriate regional office within fourteen (14) working days.
5. Chronic Rainfall Discharge. In the event of a discharge of manure, sludge or wastewater from a RCS or a LMU due to chronic rainfall, 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, 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 (5) 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 wastewater land applied during the last twelve (12) months on-site at the CAFO facility;
  - (d) total wastewater, sludge, and/or manure transferred to other persons during the reporting period;
  - (e) total number of acres for land application under the control of the permittee ;

- (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 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 new LMU, regardless of whether manure, wastewater, or sludge 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 sixty (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 conditions is a violation of the permit and statutes under which it was issued and is ground 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, which 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 thirty (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 acknowledgement 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 Volumes.
  - 1. The permittee shall maintain the wastewater volumes in each RCS in accordance with Table 4.

**Table 4: Volume Allocations for RCS(s) in Acre-feet**

<b>RCS #</b>	<b>Design Rainfall Event Runoff</b>	<b>Process Generated Wastewater</b>	<b>Minimum Treatment Volume</b>	<b>Sludge Accumulation</b>	<b>Water Balance</b>	<b>Required Capacity Without Freeboard</b>	<b>Actual Capacity Without Freeboard</b>
1	6.66	0	0	0.09	0.33	7.09	9.15

- 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 record 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.
  - 1. date of 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 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 wastewater on a dry basis;
  - 5. 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
  - 6. annual nutrient analysis for at least one (1) representative sample of manure, sludge (if applicable), slurry, and wastewater for total nitrogen, total phosphorus, and total potassium.
- D. Table 5 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.

**Table 5: Buffer Distances**

<b>LMU #</b>	<b>Vegetative Buffer Setback (feet)</b>	<b>Additional Buffer Setback NRCS Code 393 Filter Strip Flow Length (feet)</b>
1	100	33
2	100	33

- E. The sludge volume in each RCS will be measured and recorded in the PPP as necessary, but at least annually beginning in year three (3) of the permit.
- F. There will be no grazing of livestock on the LMUs for this CAFO unless the NMP reflects grazing and the grazing practices mentioned in the NRCS Conservation Practice Code 393, Filter Strip, are implemented to protect buffers.
- G. Settling Basin Solids.
  - 1. For the purpose of this permit, settling basin solids shall be defined as manure.
  - 2. If settling basin solids are land applied, an annual sample must be collected and analyzed in accordance with Section VII.A.9(a), in addition to other manure and wastewater.
- H. All runoff from silage, commodity, and hay 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, commodity, or hay storage areas located outside the drainage area of the RCSs.

- I. Slurry from freestall barns.
  - 1. For the purpose of this permit, slurry from freestall barns shall be defined as manure.
  - 2. If slurry from freestall barns is land applied, an annual sample must be collected and analyzed in accordance with Section VII.A.9(a), in addition to other manure and wastewater.
  - 3. 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 thirty (30) days. Based on review of the information this permit may be formally amended to require additional controls or other requirements.
- J. Land application of manure and sludge is prohibited on LMUs. Temporary storage of manure and sludge is prohibited in LMUs.
- K. During the annual site inspection, the permittee will inspect the integrity of the concrete slab and well head of well #2. Integrity compromises such as the cement slab cracking, sanitary seal deterioration, cracks in the well casing, or well house deterioration will be repaired. Fertilizers and pesticides will not be stored in any structure that houses the water wellhead.
- L. Within 180 days of permit issuance, the permittee will plug water well #4, as shown on Attachment D in accordance with 16 TAC 76 water well drilling rules. A copy of the plugging report and abandoning report will be retained in the on-site PPP.
- M. Flushing of the freestall barns is prohibited. Manure removal may be accomplished by dry scrape or vacuum only.
- N. A LMU map showing historical LMUs shall be maintained in the PPP.
- O. There will be no process generated wastewater or wash water entering the RCS from the confinement area at any time.

ATTACHMENT A  
SITE MAP

**ATTACHMENT B  
LAND APPLICATION AREAS**

ATTACHMENT C  
VICINITY MAP

ATTACHMENT D  
WELL LOCATION AREAS

**ATTACHMENT E  
METHODOLOGY FOR CALCULATING MAXIMUM APPLICATION RATES  
AND  
ANNUAL RECALCULATION OF APPLICATION RATES**

1. Identify the Soil Test P Level (Very Low, Low, Medium, High, Very High) on your soil test analysis. If it is not identified on the soil analysis report contact Soil, Water and Forage Testing Laboratory, Department of Soil and Crop Sciences, 345 Heep Center, 2474 TAMU, College Station, TX 77843-2474. Telephone: 979-845-4816.
2. Update Table 1 to Attachment E:
  - a. Populate the Sub Total column with the point value that corresponds to the Site Characteristic for each.
  - b. Calculate the Total Index Points
  - c. Select the P Runoff Potential from the total sum of the Index Points of the Site Characteristics using the Phosphorus Index Classification Table.
3. Determine which of the tables (TABLE 1 or TABLE 2) on the following page is appropriate to use. Each table describes the criteria for its use.
4. Determine which application rate column is appropriate using the following criteria:
  - a. Use the Maximum TMDL Annual P Rate if this LMU is located in a segment with an approved TMDL.
  - b. Use Maximum Annual P Application if this LMU is not located in a segment with an approved TMDL and you wish to apply annually.
  - c. Use Maximum Biennial Application Rate if this LMU is not located in a segment with an approved TMDL and you wish to apply biennially.
5. Determine the Maximum Application Rate using the table identified in Step 3, the column identified in Step 4, and the P Runoff Potential identified in Step 2.c.
6. Using one of the approved crops and yield goals identified on Attachment F for this LMU, determine the maximum application rate (in lbs/ac) for that crop and yield goal and the Maximum Application Rate identified in Step 5 from the S-Crop Table.
  - a. Example 1: If the Maximum Application Rate in Step 5 is "1.5 Times Annual Crop P Requirement", find the number identified on the S-Crop Table under the column "Crop P<sub>2</sub>O<sub>5</sub> requirement" for your crop/yield goal, then multiply that number by 1.5 to determine your maximum application rate (in lbs/ac P<sub>2</sub>O<sub>5</sub>).
  - b. Example 2: If the Maximum Application Rate in Step 5 is "0.5 Times Annual Crop P Removal", find the number identified on the S-Crop Table under the column "Crop P<sub>2</sub>O<sub>5</sub> Removal Rate" for your crop/yield goal, then multiply that number by 0.5 to determine your maximum application rate (in lbs/ac P<sub>2</sub>O<sub>5</sub>).

Table 1: Phosphorus Index Worksheet for East Texas from NRCS Practice Standard 590

Client Name: Planner: Impaired Watershed (Y or N):		Field(s): Location: Runoff Curve No.:		Date: Crop: % Slope:		
Site Characteristic (Weighting Factor)	[Weighting Factor Times the Column Factor]					Sub Total
	0	1	2	4	8	
Soil Test P Rating (1.00)	N/A [0]	Very Low - Low [1.0]	Moderate [2.0]	High [4.0]	Very High [8.0]	
Fertilizer Phosphorus (P <sub>2</sub> O <sub>5</sub> ) Application Rate (0.75)	None Applied [0]	1-40 lbs/ac P <sub>2</sub> O <sub>5</sub> [0.75]	41-90 lbs/ac P <sub>2</sub> O <sub>5</sub> [1.5]	91-150 lbs/ac P <sub>2</sub> O <sub>5</sub> [3.0]	>150 lbs/ac P <sub>2</sub> O <sub>5</sub> [6.0]	
Organic Phosphorus (P <sub>2</sub> O <sub>5</sub> ) Application Rate (0.75)	None Applied [0]	1-40 lbs/ac P <sub>2</sub> O <sub>5</sub> [0.75]	41-90 lbs/ac P <sub>2</sub> O <sub>5</sub> [1.5]	91-150 lbs/ac P <sub>2</sub> O <sub>5</sub> [3.0]	>150 lbs/ac P <sub>2</sub> O <sub>5</sub> [6.0]	
Phosphorus Fertilizer Application Method and Timing (0.50)	None Applied [0]	Placed deeper than 2 in. or broadcast and incorporated within 48 hours [0.50]	Surface applied 12/1 - 2/15 [1.0]	Surface applied 2/16 - 4/15 or 6/6 -11/30 [2.0]	Surface applied 4/16 - 6/15 [4.0]	
Organic Phosphorus Source Application Method and Timing (0.50)	None Applied [0]	Placed deeper than 2 in. or broadcast and incorporated within 48 hours [0.50]	Surface applied 12/1 - 2/15 [1.0]	Surface applied 2/16 - 4/15 or 6/6 -11/30 [2.0]	Surface applied 4/16 - 6/15 [4.0]	
Proximity of nearest field edge to named stream or lake(1.25)	> 2000 feet [0]	1000 – 1999 feet [1.25]	500 – 999 feet [2.5]	100 – 499 feet [5.0]	< 100 feet [10.0]	
Runoff Class (Runoff Class Table 3) (1.00)	Negligible [0]	Low [1.0]	Moderate [2.0]	High [4.0]	Very High [8.0]	
Soil Erosion (All Sources)(1.50)	Very Low <1 t/ac [0]	Low 1-3 t/ac [1.5]	Medium 3-5 t/ac [3.0]	High 5-10 t/ac [6.0]	Very High >10 t/ac [12.0]	
Total Index Points:						

Table 2: Application Rates from NRCS Practice Standard 590

Commercial fertilizers must be applied in accordance with SWFTL recommendations. Application of all organic soil amendments must not exceed the values in Table 1 or 2.

**TABLE 1:** A Nutrient Management Plan (NMP)<sup>1</sup> is required where any organic soil amendments are applied where Soil Test P Level is less than 200 ppm statewide or, less than 350 ppm in arid areas<sup>2</sup> with distance to a named stream greater than one mile.

P – Index Rating	Maximum TMDL Annual P Application Rate	Maximum Annual P Application Rate	Maximum Biennial Application Rate
Very Low, Low	Annual Crop Nitrogen (N) Requirement	1.0 Times Annual Crop N Requirement	2.0 Times Annual Crop N Requirement
Medium	2.0 Times Annual Crop P Requirement <sup>3</sup>	2.0 Times Annual Crop P Requirement <sup>3</sup>	2.0 Times Annual Crop N Requirement
High	1.5 Times Annual Crop P Requirement <sup>3</sup>	1.5 Times Annual Crop P Requirement	Double the Maximum Annual P Application Not to Exceed 2 Times the Annual Crop N Requirement
Very High	1.0 Times Annual Crop P Requirement <sup>3</sup>	1.0 Times Annual Crop P Requirement <sup>3</sup>	Double the Maximum Annual P Application Not to Exceed 2 Times the Annual Crop N Requirement

**TABLE 2:** A Nutrient Utilization Plan (NUP)<sup>1</sup> is required where Soil Test P Level is: equal to or greater than 200 ppm in nonarid areas<sup>2</sup>, or equal to or greater than 350 ppm in arid areas<sup>2</sup> with distance to a named stream greater than one mile and erosion control is adequate to keep erosion at the soil loss tolerance (T) or less, or equal to or greater than 200 ppm in arid areas<sup>2</sup> with distance to a named stream less than one mile.

P – Index Rating	Maximum TMDL Annual P Application Rate	Maximum Annual P Application Rate	Maximum Biennial Application Rate
Very Low, Low	1.0 Times Annual Crop P Removal <sup>4</sup>	Annual Crop N Removal	2.0 Times Crop N Removal
Medium	1.0 Times Annual Crop P Removal <sup>4</sup>	1.5 Times Annual Crop P Removal <sup>4</sup>	Double the Maximum Annual P Application Not to Exceed 2 Times the Annual Crop N Removal
High	1.0 Times Annual Crop P Removal <sup>4</sup>	1.0 Times Annual Crop P Removal <sup>4</sup>	Double the Maximum Annual P Application Not to Exceed 2 Times the Annual Crop N Removal
Very High	0.5 Times Annual Crop P Removal <sup>4</sup>	0.5 Times Annual Crop P Removal <sup>4</sup>	Double the Maximum Annual P Application Not to Exceed 2 Times the Annual Crop N Removal

**Footnotes Applicable to both Tables**

<sup>1</sup> NMP and NUP designations are consistent with 30 TAC §321.40.

<sup>2</sup> All counties must use the 200 ppm P level limit to determine whether to use Table 1 or Table 2. However, in counties receiving less than 25 inches of annual rainfall, the 350 ppm P level limit applies if the field application area is greater than 1 mile from a named stream or lake. See map in current Texas Agronomy Technical Note 15, Phosphorus Assessment Tool for Texas for county rainfall designations.

<sup>3</sup> Not to exceed the annual nitrogen requirement rate.

<sup>4</sup> Not to exceed the annual nitrogen removal rate.

**ATTACHMENT F  
SITE SPECIFIC INFORMATION FOR LAND APPLICATION AREAS FROM NUTRIENT MANAGEMENT PLAN**

Table 1: Current Site Specific Information from NMP

<b>LMU Name</b>	<b>Application Acreage</b>	<b>Crop</b>	<b>Yield Goal</b>	<b>*Recommendation (lbs/ac) (*1)</b>		<b>Maximum Amount of Nutrients Derived from all Sources (lbs/ac) (*1)</b>	
				<b>Nitrogen</b>	<b>Phosphorus as P<sub>2</sub>O<sub>5</sub></b>	<b>Nitrogen</b>	<b>Phosphorus as P<sub>2</sub>O<sub>5</sub></b>
<b>LMU 1</b>	81	Coastal/ Triticale	3 Cut/ graze or Hay 7000 #	460	256	460	256
<b>LMU 2</b>	28	Coastal/ Triticale	3 Cut/ graze or Hay 7000 #	460	256	460	256

**NOTE**

\*Nutrients Applied When Application is At Maximum Rates from NMP 590-633 Plan V 4.0\_5 with the Print Date 11/22/2013. Any future revision to the NMP will be based on the current version of the 590-633 CNMP Component (NMP/NUP) Worksheet. Maximum rates are based on wastewater and manure analyses date processed 09/06/2013 and soil analysis date 06/21/2013 by the Soil, Water and Forage Testing Laboratory, AgriLife Extension, College Station, Texas. The Maximum Rates (lb/ac) for nitrogen (N) and phosphorus (P<sub>2</sub>O<sub>5</sub>) will be updated based on most recent annual analyses of soil and waste.

(\*1) Nutrient recommendations and maximum amount of nutrients derived from all sources have been established for both nitrogen and phosphorus based on the NMP submitted with the application. The permittee is required to recalculate these values annually in accordance with the requirements of this permit. These annual recalculations do not constitute a substantial change and therefore do not require an amendment of this permit.

Big John's Wood Products, Inc. & MW Dairy Farm, LLC. Permit No. WQ0005008000  
ATTACHMENT F  
SITE SPECIFIC INFORMATION FOR LAND APPLICATION AREAS FROM NUTRIENT  
MANAGEMENT PLAN

Table 2: Alternate Crops and Yield Goals

LMU Name	Application Acreage	Crop	Annual Yield Goal	Nitrogen Requirement/ Removal Rates	P <sub>2</sub> O <sub>5</sub> Requirement/ Removal Rates
Applicable to ALL LMUs	109	Coastal	2 Cut	200/169	125/39
			2 Cut+ Graze	260/198	125/62
			3 Cut	300/238	125/74
			3 Cut+ Graze	360/257	125/80
			4 Cut	400/257	170/80
			5-6 Cut	500/297	170/93
			Grazing 1 AU/AC	240/198	70/62
			Green Chop (30% DM) 9-11 tons	200/170	125/47
			Green Chop (30% DM) 15-17 tons	300/255	125/70
			Green Chop (30% DM) 18-20 tons	350/300	170/82
			Green Chop (30% DM) 21-23 Tons	400/345	170/95
		Small Grains	Light Grazing	60/75	80/28
			Moderate Grazing	160/97	105/36
			Heavy Grazing	240/112	105/41
			Triticale Graze or Hay 7000#	160/117	105/43
			Triticale Graze or Hay 9000#	240/150	105/56
			Green Chop (25% DM) 2-3 tons	75/68	40/24
			Green Chop (25% DM) 4-5 tons	135/113	60/41
			Green Chop (25% DM) 6-7 tons	200/158	80/57
			Green Chop (25% DM) 8-9 tons	260/203	90/73
			Silage (35%) 5-7 tons	70/64	30/34
			Silage (35%) 8-9 tons	95/83	40/43
			Silage (35%) 10-11 tons	120/101	70/53
			Silage (35%) 12-14 tons	160/128	90/67
		Sorghum	Sudan Hay/Graze 7500#	160/149	55/57
			Sudan Hay/Graze 11000#	240/219	105/83
			Forage Hay 7500#	160/151	55/57
			Forage Hay 11000#	240/219	105/83
			Silage (35% DM) 7-10 tons	125/119	60/37
			Silage (35% DM) 11-15 tons	200/179	75/55
			Silage (35% DM) 16-20 tons	280/238	95/74
			Silage (35% DM) 21-25 tons	360/298	115/92
		Corn	Silage (35% DM) 7-10 tons	85/79	60/38
			Silage (35% DM) 11-15 tons	140/119	80/58
			Silage (35% DM) 16-20 tons	240/183	100/77
			Silage (35% DM) 21-25 tons	350/263	105/96

# **ATTACHMENT D**

TCEQ INTRA-AGENCY TRANSMITTAL MEMO

DATE: June 9, 2014

2014 JUN -9 PM 3:06

**TO:** FINAL DOCUMENTS TEAM LEADER  
OFFICE OF THE CHIEF CLERK  
BUILDING F, MC-105

**FROM:** HANNAH WILSON  
CHIEF CLERKS OFFICE  
ENVIRONMENTAL LAW DIVISION  
BUILDING A, MC-173

**Attached:** Amended Executive Director's Response to Comments

Application Information

Program Area (Air, Water or Waste): **Water**

Permit No. **WQ0005008000**

Name: **BIG JOHN'S WOOD PRODUCTS, INC. & MW DAIRY FARM, LLC  
D.B.A THE HEIFER FARM**

Docket/CID Item # (if known): \_\_\_\_\_

**OCC Action Required** (check applicable boxes)

Date stamp and return copy to above-noted ELD Staff Attorney and:

FOR ALL PROGRAM AREAS: (required only when changes needed to official agency mailing list)

- Update** the mailing list in your file with the attached contact names and addresses  
*Include corrected or additional names and addresses for mailing list*

FOR WASTE & WATER:

- Send Response to Comments Letter which solicits hearing requests and requests for reconsideration to the mailing list in your files  
*For Waste and Water this would occur in all circumstances when comments have been received for 801 applications*
- Or
- Send Response to Comments Letter and Motion to Overturn Letter which solicits motions to overturn to the mailing list in your files  
*For Waste and Water this may occur when all comments have been withdrawn for 801 applications or when comments are received for applications that will not be set for agenda.*

FOR AIR (NSR only):

- Send RTC with response to comments letter which solicits contested case hearing requests and requests for reconsideration to the mailing list in your files  
*For Air NSR applications this would occur only when there are pending contested case hearing requests (except no-increase renewals)*
- Set for commission agenda and send RTC with agenda setting letter  
*This would occur when there are pending contested case hearing requests on a no-increase renewal and technical review is complete.*
- Hold until a commission agenda date is requested and then send RTC with the Agenda Setting Letter  
*For Air applications this would occur when there are pending hearing requests on a no-increase renewal; but technical review is NOT complete. If this box is checked, ED staff must call the OCC Agenda Team Leader to arrange a specific agenda date.*
- Place RTC in File - no further action required by OCC  
*For Air NSR applications this would occur when the matter is uncontested but comments were received, APD will send a copy with MTO letter*

Other Instructions: \_\_\_\_\_

TPDES PERMIT NO. WQ0005008000

TEXAS  
COMMISSION  
ON ENVIRONMENTAL  
QUALITY

APPLICATION BY BIG JOHN'S  
WOOD PRODUCTS, INC. & MW  
DAIRY FARM, LLC, D.B.A.  
THE HEIFER FARM

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§

2014 JUN -9 PM 3:06  
BEFORE THE  
TEXAS COMMISSION  
ON ENVIRONMENTAL  
QUALITY

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**EXECUTIVE DIRECTOR'S RESPONSE TO PUBLIC COMMENT**

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The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or Commission) files this Response to Public Comments (Response) on the ED's preliminary decision to approve the application of Big John's Wood Products, Inc. and MW Dairy Farm, LLC (Applicants) for a new dairy replacement Concentrated Animal Feeding Operation (CAFO) individual permit, Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0005008000. The site was previously authorized as a dairy facility under the canceled TPDES Permit No. WQ0003189000. 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 comment letters from Craig and Debbie Mader, Jay and Jamie Anthony, and Jean Welch.

This Response addresses all public comments received, whether or not withdrawn. For more information about this permit application or the wastewater permitting process, please call the TCEQ Public Education Program at 1-800-687-4040. General information about the TCEQ can be found on our website at [www.tceq.texas.gov](http://www.tceq.texas.gov).

**I. Background**

***A. Description of Facility***

Applicants seek authorization to operate a new dairy replacement facility at a previously authorized dairy CAFO site. The proposed permit would authorize Applicants to confine a maximum capacity of 1,525 head, none of which will be milking

cows. The site was previously authorized as a dairy facility under the canceled TPDES Permit No. WQ0003189000.

The facility consists of one retention control structure with a total required capacity without freeboard of 7.09 acre-feet. The facility also includes two land management units (LMUs). LMU #1 is 81 acres and LMU #2 is 28 acres.

The facility is located at 2626 County Road 428, Stephenville, in Erath County, Texas, in the drainage area of the Upper North Bosque River in Segment No. 1255 of the Brazos River basin.

### ***B. Procedural Background***

TCEQ received the permit application on January 28, 2013 and declared it administratively complete on March 29, 2013. The Notice of Receipt and Intent to Obtain a Water Quality Permit (NORI) was published in the *Stephenville Empire Tribune* on April 11, 2013. ED 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 (NAPD) was published in the *Stephenville Empire Tribune* on March 7, 2014. Applicants were not required to publish notice in an alternative language because a bilingual education program is not required by the Texas Education Code in the Huckabay Independent School District. The public comment period ended on April 7, 2014. This application is subject to the procedural requirements adopted pursuant to House Bill 801, 76th Legislature, 1999.

### ***C. Access to Rules, Laws, and Records***

The following websites may be useful:

- Secretary of State website for all administrative rules: [www.sos.texas.gov](http://www.sos.texas.gov)
- TCEQ rules in Title 30 of the Texas Administrative Code: [www.sos.texas.gov/tac/](http://www.sos.texas.gov/tac/) (select "TAC Viewer" on the right, then "Title 30 Environmental Quality")
- Texas statutes: <http://www.statutes.legis.state.tx.us/>
- TCEQ website: <http://www.tceq.texas.gov/> (for downloadable rules in Microsoft Word or Adobe PDF formats, select "Rules, Policy, & Legislation," then "Rules and Rulemaking," then "Download TCEQ Rules")
- Federal rules in Title 40 of the Code of Federal Regulations: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title40/40tab_02.tpl)

- Federal environmental laws: [www.epa.gov/epahome/laws.htm](http://www.epa.gov/epahome/laws.htm)

Commission records for this facility, including the application, draft permit, statement of basis/technical summary and ED's preliminary decision, are available for viewing and copying at the TCEQ main office, 12100 Park 35 Circle, Austin, TX 78753, on the 1st Floor of Building F (Office of the Chief Clerk, for the current application until final action is taken). These records are also available for viewing and copying at the TCEQ Region 4, Stephenville Office at 580 West Lingleville Road, Suite D, Stephenville, Texas 76401.

## **II. Comments and Responses**

### **Comment 1:**

The Maders, the Anthonys, and Ms. Welch commented that they are concerned about the proposed CAFO's potentially offensive odor and associated issues, such as flies, and the potential impact on human and livestock health.

### **Response 1:**

The proposed permit is protective of human health and the environment provided the Applicant operates and maintains the facility according to TCEQ rules and the requirements in the proposed permit.

A number of requirements in 30 TAC Chapter 321, Subchapter B and the proposed permit are designed to address the potential for nuisance odors or air pollution conditions. 30 TAC § 321.43(j)(1)(A) requires that CAFO facilities be operated in such a manner as to prevent the creation of a nuisance or air pollution condition as defined by 30 TAC § 321.32(32) (relating to definitions) and Texas Health and Safety Code (THSC) § 341.011, and as prohibited by 30 TAC § 101.4 (relating to nuisance). The rules also require facilities to operate in such a manner as to prevent a condition of air pollution as defined by Texas Health and Safety Code § 382.003(3). Additionally, the rules require an operator to take the necessary action to identify any nuisance conditions that occur and to take action to abate such conditions as soon as practicable or as specified by the ED.

30 TAC § 321.32(32) defines “nuisance” as:

Any discharge of air contaminant(s), including but not limited to odors, of sufficient concentration and duration that are or may tend to be injurious to or that adversely affects human health or welfare, animal life, vegetation or property, or that interferes with the normal use and enjoyment of animal life, vegetation, or property.

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The proposed permit requires the facility to develop a pollution prevention plan (PPP) for proper operation and maintenance of the facility. The PPP must include the following provisions:

1. The facility must have a description of waste handling procedures in its PPP and these procedures are subject to review by TCEQ for compliance with TCEQ rules.
2. Application rates of wastewater shall not exceed the nutrient uptake (agronomic rate) of cover crop and hydrologic capacity. This helps prevent odors and other nuisance conditions caused by standing water or excess water.
3. Application of wastewater must 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.
4. When manure is stockpiled, it is to be stored in a well-drained area with no ponding of water, and the top and sides of stockpiles shall be adequately sloped to ensure proper drainage.
5. The solids must be cleaned out of the RCS to prevent the accumulation of solids from exceeding the sludge volume designed for the structure. The Applicant is required to remove solids only when there are favorable wind conditions that carry odors away from nearby receptors.
6. Dead animals shall be properly disposed of within 3 days unless otherwise provided by the Executive Director.

Regarding flies, the odor control best management practices discussed above, if properly implemented, should reduce the potential for breeding.

In order to obtain an air standard authorization, the facility must also meet the requirements of 30 TAC § 321.43. The Applicants' facility was constructed before August 19, 1998 and meets the odor control plan requirement in 30 TAC § 321.43(j)(2) by maintaining a 0.25 mile buffer.

Individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with the terms of any permit or other environmental regulation by contacting the Stephenville Regional Office at 254-965-9200 or 800-687-7078, or by calling the 24-hour, toll-free Environmental Complaints Hotline at 1-888-777-3186. Additionally, complaints may be filed online at [www.tceq.texas.gov/complaints](http://www.tceq.texas.gov/complaints). TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it may be subject to a possible enforcement action.

**Comment 2:**

The Maders, the Anthonys and Ms. Welch expressed concern about the proposed CAFO's potential to decrease their property values. The Maders suggested relocating the proposed CAFO to a less densely settled area and the Maders and Ms. Welch requested limiting the CAFO's maximum capacity to 300 head.

**Response 2:**

The wastewater permitting process is intended to control the discharge of pollutants into or adjacent to water in the state and to protect the water quality of the state's rivers, lakes, and coastal waters. TCEQ does not have jurisdiction to review the effect the location of the CAFO may have on property values when reviewing an application for a CAFO permit.

In regards to the proposed location of the CAFO, there are a number of buffer zone requirements in 30 TAC Chapter 321 that the Applicants are required to meet, but TCEQ cannot mandate a change in the proposed location if the location complies with all applicable rules including the buffer requirements. Additionally, TCEQ cannot limit the number of head proposed by a CAFO, unless TCEQ review of the permit application

determines the proposed facility would not be able to meet the permit requirements for the maximum head requested.

**Changes Made to the Draft Permit in Response to Comments:**

No changes were made to the draft permit in response to comments.

Respectfully submitted,

Texas Commission on Environmental Quality

Richard A. Hyde, P.E., Executive Director

Robert Martinez, Director  
Environmental Law Division



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Hannah Wilchar, Staff Attorney  
Environmental Law Division  
State Bar No. 24088631  
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Austin, Texas 78711-3087  
Phone (512) 239-2225  
Fax: (512) 239-0606

REPRESENTING THE  
EXECUTIVE DIRECTOR OF THE  
TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

**CERTIFICATE OF SERVICE**

I certify that on June 9, 2014, the "Executive Director's Response to Public Comment" for Permit No. WQ0005008000 was filed with the Texas Commission on Environmental Quality's Office of the Chief Clerk.



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Hannah Wilchar, Staff Attorney  
Environmental Law Division  
State Bar No. 24088631

# **ATTACHMENT E**



# Compliance History Report

**PENDING** Compliance History Report for CN602509093, RN102065265, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

<b>Customer, Respondent, or Owner/Operator:</b>	CN602509093, Big John's Wood Products, Inc.	<b>Classification:</b> HIGH	<b>Rating:</b> 0.00
<b>Regulated Entity:</b>	RN102065265, THE HEIFER FARM	<b>Classification:</b> HIGH	<b>Rating:</b> 0.00
<b>Complexity Points:</b>	3	<b>Repeat Violator:</b> NO	
<b>CH Group:</b>	12 - Agriculture, Forestry, Fishing, and Hunting		
<b>Location:</b>	2626 COUNTY ROAD 428 STEPHENVILLE, TX 76401-6435, ERATH COUNTY		
<b>TCEQ Region:</b>	REGION 04 - DFW METROPLEX		
<b>ID Number(s):</b>			
<b>WASTEWATER AGRICULTURE EPA ID TX0134295</b>	<b>WASTEWATER AGRICULTURE PERMIT WQ0005008000</b>		
<b>Compliance History Period:</b>	September 01, 2009 to August 31, 2014	<b>Rating Year:</b> 2014	<b>Rating Date:</b> 09/01/2014
<b>Date Compliance History Report Prepared:</b>	September 17, 2014		
<b>Agency Decision Requiring Compliance History:</b>	Enforcement		
<b>Component Period Selected:</b>	September 01, 2009 to August 31, 2014		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b>	JOY ALABI	<b>Phone:</b>	(512) 239-1318

## Site and Owner/Operator History:

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If **YES** for #2, who is the current owner/operator?  
Lone Star, FLCA OWNER since 2/7/2011  
Big John's Wood Products, Inc. OWNER since 6/30/2011  
MW Dairy Farm, LLC OWNER OPERATOR since 1/28/2013  
METSGAR, DON OWNER since 1/1/1800  
VANDEN BERGE, STEVE OWNER since 1/1/1800
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)?  
Vanden Berge Dairy Partnership, OWNER, 5/25/2005 to 2/6/2011
- 5) If **YES**, when did the change(s) in owner or operator occur?  
2/7/2011

## Components (Multimedia) for the Site Are Listed in Sections A - J

**A. Final Orders, court judgments, and consent decrees:**  
N/A

**B. Criminal convictions:**  
N/A

**C. Chronic excessive emissions events:**  
N/A

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

Item 1	March 11, 2011	(884562)
Item 2	April 15, 2011	(912593)
Item 3	May 02, 2014	(1165287)

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

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

**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



# Compliance History Report

**PENDING** Compliance History Report for CN603727181, RN102065265, Rating Year 2014 which includes Compliance History (CH) components from September 1, 2009, through August 31, 2014.

<b>Customer, Respondent, or Owner/Operator:</b>	CN603727181, MW Dairy Farm, LLC	<b>Classification:</b> HIGH	<b>Rating:</b> 0.00
<b>Regulated Entity:</b>	RN102065265, THE HEIFER FARM	<b>Classification:</b> UNCLASSIFIED	<b>Rating:</b> -----
<b>Complexity Points:</b>	6	<b>Repeat Violator:</b> NO	
<b>CH Group:</b>	12 - Agriculture, Forestry, Fishing, and Hunting		
<b>Location:</b>	2626 COUNTY ROAD 428 STEPHENVILLE, TX 76401-6435, ERATH COUNTY		
<b>TCEQ Region:</b>	REGION 04 - DFW METROPLEX		
<b>ID Number(s):</b>			
<b>WASTEWATER AGRICULTURE EPA ID</b>	TX0134295	<b>WASTEWATER AGRICULTURE PERMIT</b>	WQ0005008000
<b>Compliance History Period:</b>	September 01, 2009 to August 31, 2014	<b>Rating Year:</b> 2014	<b>Rating Date:</b> 09/01/2014
<b>Date Compliance History Report Prepared:</b>	September 17, 2014		
<b>Agency Decision Requiring Compliance History:</b>	Enforcement		
<b>Component Period Selected:</b>	September 01, 2009 to August 31, 2014		
<b>TCEQ Staff Member to Contact for Additional Information Regarding This Compliance History.</b>			
<b>Name:</b>	JOY ALABI	<b>Phone:</b>	(512) 239-1318

## **Site and Owner/Operator History:**

- 1) Has the site been in existence and/or operation for the full five year compliance period? YES
- 2) Has there been a (known) change in ownership/operator of the site during the compliance period? YES
- 3) If **YES** for #2, who is the current owner/operator?  
Lone Star, FLCA OWNER since 2/7/2011  
Big John's Wood Products, Inc. OWNER since 6/30/2011  
MW Dairy Farm, LLC OWNER OPERATOR since 1/28/2013  
METSGAR, DON OWNER since 1/1/1800  
VANDEN BERGE, STEVE OWNER since 1/1/1800
- 4) If **YES** for #2, who was/were the prior owner(s)/operator(s)?  
Vanden Berge Dairy Partnership, OWNER, 5/25/2005 to 2/6/2011
- 5) If **YES**, when did the change(s) in owner or operator occur?  
2/7/2011

## **Components (Multimedia) for the Site Are Listed in Sections A - J**

- A. Final Orders, court judgments, and consent decrees:**  
N/A
- B. Criminal convictions:**  
N/A
- C. Chronic excessive emissions events:**  
N/A
- D. The approval dates of investigations (CCEDS Inv. Track. No.):**  
N/A
- E. Written notices of violations (NOV) (CCEDS Inv. Track. No.):**

A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action, nor proof that a violation has actually occurred.

N/A

**F. Environmental audits:**

**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