

The Texas Commission on Environmental Quality (commission) adopts the amendments to §321.33 and §321.36 *without changes* to the proposed text as published in the February 24, 2006, issue of the *Texas Register* (31 TexReg 1187) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The commission adopted the current version of the Chapter 321, Subchapter B rules on July 15, 2004, to make the Texas rules consistent with federal regulations. This adopted rulemaking is an administrative change that makes state requirements consistent with federal requirements by modifying the date that existing dry litter poultry operations must obtain authorization and the date that all concentrated animal feeding operations (CAFOs) have to develop and implement a nutrient management plan (NMP). For consistency with the federal rules, this rulemaking extends the deadline for existing dry litter poultry operations to obtain a permit from April 13, 2006, to July 31, 2007, and extends the deadline for all CAFOs to develop and implement an NMP from December 31, 2006, to July 31, 2007.

SECTION BY SECTION DISCUSSION

The adopted amendment to §321.33(f), Applicability and Required Authorizations, makes the deadline for existing dry litter poultry operations to obtain authorization consistent with changes to the federal requirement. The deadline for existing dry litter poultry operations to obtain authorization under a permit is extended from April 13, 2006, to July 31, 2007.

The adopted amendment to §321.36(d)(1), Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feeding Operations, makes the deadline for CAFOs to develop

and implement an NMP consistent with changes to the federal requirement. The deadline for CAFOs to develop and implement an NMP is extended from December 31, 2006, to July 31, 2007.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and made a determination that the rulemaking is not subject to §2001.0225. The adopted rulemaking does not meet the definition of a “major environmental rule” as defined in Texas Government Code, §2001.0225, and the rulemaking is not subject to the regulatory analysis provisions of §2001.0225(b) because it does not meet any of the four applicability requirements listed in §2001.0225(a). Texas Government Code, §2001.0225(a), applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law.

“Major environmental rule” means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking, which is an administrative change to the rules, does not have a material adverse effect on the economy or sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the

state or a sector of the state. The rulemaking does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency.

The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of this rulemaking is to make an administrative change that makes state requirements consistent with federal requirements by modifying the date that existing dry litter poultry operations must obtain authorization and the date that all CAFOs have to develop and implement an NMP. The rulemaking substantially advances this stated purpose.

This rulemaking adopts a rule by a governmental entity. Therefore, Texas Government Code, Chapter 2007 applies. However, this governmental action does not result in a burden on private real property. If adopted, this rulemaking only changes the dates regarding when existing dry litter poultry operations obtain authorization and when CAFOs are required to develop and implement an NMP. Therefore, the adoption of the rules does not result in a constitutional or statutory taking of private real property and no private real property interests are burdened or impacted by this rulemaking.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the adopted rulemaking and found that it is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et. seq.*, and therefore, must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22, and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. The commission determined that the amendments are consistent with CMP goals and policies because the rulemaking is an administrative rule that makes state requirements consistent with federal requirements concerning the date existing dry litter poultry operations must obtain authorization and the date that all CAFOs have to develop and implement an NMP. These changes do not have direct or significant adverse effect on any coastal natural resource areas; do not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments do not violate (exceed) any standards identified in the applicable CMP goals and policies.

The commission invited public comment regarding the consistency with the coastal management program during the public comment period. No comments were received on the CMP.

PUBLIC COMMENT

A public hearing for this rulemaking was held in Austin on March 15, 2006. The public comment period for this rulemaking closed at 5:00 p.m. on March 27, 2006. Comments were received from

Texas Poultry Federation (TPF), Jackson Walker, L.L.P. on behalf of Texas Poultry Federation (JW), Texas State Soil & Water Conservation Board (TSSWCB), Pilgrim's Pride Corporation (PPC), Texas State Representative Jim McReynolds (Representative McReynolds), Texas Farm Bureau (TFB), Texas Cattle Feeders Association (TCFA), and Texas State Senator Todd Staples (Senator Staples).

RESPONSE TO COMMENTS

Comment

TFB supported the proposed rules.

RESPONSE

The commission acknowledges this comment.

Comment

TPF, JW, TSSWCB, and PPC commented that they support the rulemaking to extend the deadlines for dry litter poultry and development of NMPs as this is consistent with the recent actions taken by the United States Environmental Protection Agency (EPA) to amend the federal CAFO rule to extend these deadlines. While they support the deadline extensions, they believe the commission should go further. TPF, JW, TSSWCB, and PPC stated that the Second Circuit Court of Appeals in *Waterkeeper Alliance v. EPA*, 399 F.3d 486 (2nd Cir. 2005), eliminated portions of the federal CAFO rule that requires CAFOs to apply for National Pollutant Discharge Elimination System permits or otherwise demonstrate they have no potential to discharge. TPF, JW, TSSWCB, and PPC stated that the Second Circuit clearly vacated those provisions and that the Second Circuit decision is final and that portion of the federal rule that Texas relied upon to regulate dry litter poultry is no longer the law. Based on the

action of the Second Circuit, the commission should eliminate the requirement for dry litter poultry operations to obtain a permit and amend the rule language to reflect that change. PPC further commented that the commission should eliminate the requirement to obtain a permit for both new and existing dry litter poultry operations. Representative McReynolds commented that the Second Circuit decision has rendered a final opinion on the issue of the rules requiring entities to be permitted if they have no potential to discharge and urged the TCEQ to look at the decision and numerous pieces of legislation regarding dry litter poultry. JW suggested amending §321.33(a) and (f) to include language creating an exception for dry litter poultry operations under the duty to apply requirement. PPC supported the language submitted by JW. JW, Representative McReynolds, TSSWCB, and PPC also stated that dry litter poultry operations in the state have, or will soon have, water quality management plans developed by the TSSWCB and to require dry litter poultry operations to also have a permit is not necessary. Representative McReynolds and TSSWCB commented that the commission should consider making permit coverage voluntary for dry litter poultry. JW and PPC commented that the commission should make similar changes to the CAFO general permit. JW and PPC further commented that a duty to apply exceeds federal requirements. JW, TSSWCB, and PPC commented that not addressing the duty to apply puts Texas at a competitive disadvantage when seeking new poultry investments.

RESPONSE

These comments are beyond the scope of the current rulemaking, the purpose of which is to make state requirements consistent with federal requirements by modifying the date that existing dry litter poultry operations must obtain authorization and the date that all CAFOs have to develop and implement an NMP. Texas was delegated the National Pollutant Discharge Elimination

System permitting program, therefore, the commission regulations are required to be consistent with federal regulations.

Comment

TCFA commented about the need for consistency among the permitting and NMP deadlines contained in Chapter 321, Subchapter B rules and the CAFO general permit. TCFA suggested that the commission remove specific dates from the CAFO general permit and replace those specific dates with references to the CAFO rules that contain the required compliance deadlines. TCFA also suggested that the commission consider additional deadline extensions in light of EPA's anticipated rulemaking.

RESPONSE

The commission agrees with the TCFA comment about maintaining consistency between the CAFO rules and the CAFO general permit. We are in the process of amending our general permit and will consider this comment during that process. The commission disagrees that additional deadline extensions are necessary at this time. The purpose of this rulemaking is to maintain consistency with the federal CAFO rules.

Comment

Senator Todd Staples commented that in light of the *Waterkeeper Alliance* and EPA's current efforts to revise its rules, the commission should extend the regulatory deadlines for all dry litter poultry facilities until Texas receives final guidance from EPA.

RESPONSE

This comment is beyond the scope of the current rulemaking, the purpose of which is to make state requirements consistent with federal requirements by modifying the date that existing dry litter poultry operations must obtain authorization and the date that all CAFOs have to develop and implement an NMP. Texas was delegated the National Pollutant Discharge Elimination System permitting program, therefore, the commission regulations are required to be consistent with federal regulations.

SUBCHAPTER B: CONCENTRATED ANIMAL FEEDING OPERATIONS

§321.33, §321.36

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which establish the commission's general authority to adopt rules; TWC, §26.011, regarding the commission's authority over water quality in the state; TWC, §26.027, which provides the commission's authority to issue permits for the discharge of waste into or adjacent to water in the state; TWC, §26.0286, regarding the procedures applicable to permits for certain CAFOs; TWC, §26.040, which provides the commission the authority to issue general permits to authorize the discharge of waste into or adjacent to water in the state; TWC, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; and TWC, §26.302, regarding the regulation of poultry facilities.

The adopted amendments implement TWC, §§5.102, 5.103, 5.105, 26.011, 26.027, 26.0286, 26.040, 26.121, and 26.302.

§321.33. Applicability and Required Authorizations.

(a) Permit required. All concentrated animal feeding operations (CAFOs) are point sources that require owners and operators to seek and obtain authorization under a water quality general permit or individual permit. CAFO owners and operators have a duty to seek coverage as described in this section.

(b) Individual permit required. A discharge from the following CAFOs may be authorized only under an individual water quality permit in accordance with §321.34 of this title (relating to Permit Applications). Except as provided by subsections (e) and (f) of this section, any operator who is required to obtain an individual water quality permit under this subsection may not commence physical construction and/or operation of any new control facilities until an individual water quality permit is issued for that CAFO, or unless otherwise authorized by the commission in accordance with Texas Water Code (TWC), §26.027(c).

(1) Any CAFO located within one mile of coastal natural resource areas as defined by Texas Natural Resources Code, §33.203, unless the CAFO was authorized by the commission prior to January 10, 1997.

(2) Any dairy CAFO located in a major sole-source impairment zone.

(3) Any CAFO where, on the date the executive director determines that the application is administratively complete, any part of the production area of the CAFO is located or proposed to be located within the protection zone of a sole-source surface drinking water supply, in accordance with TWC, §26.0286.

(4) Any CAFO where any part of the production area or land management units is located in a watershed of a segment listed on the current United States Environmental Protection Agency-approved 303(d) list of impaired water bodies, as required by 33 United States Code (USC), §1313(d), and where a total maximum daily load implementation plan has been adopted by the commission that established additional water quality protection measures for CAFOs that are not required by the CAFO general permit.

(5) Any animal feeding operation (AFO) that the executive director designates and requires to be authorized by an individual water quality permit to achieve the policies and purposes enumerated in TWC, §5.120 and §26.003; Texas Health and Safety Code, Chapters 341, 361, or 382; or §321.31 of this title (relating to Manure, Litter, and Wastewater Discharge and Air Emission Limitations). Cases for which the executive director may require an AFO to obtain an individual water quality permit include, but are not limited to, the following:

(A) the operation is located near surface or groundwater resources;

(B) compliance with standards in addition to those listed in this subchapter is necessary in order to protect water in the state from pollution;

(C) the operation is not or has not been in substantial compliance with the standards of this subchapter;

(D) the operation is under a formal commission enforcement order or has been referred to the commission for enforcement action by the Texas State Soil and Water Conservation Board;

(E) the operation does not qualify for a CAFO general permit under §205.4 of this title (relating to Authorizations and Notices of Intent);

(F) the production area or land management unit of any new CAFO is located in a watershed of a segment listed on the current 303(d) list of impaired water bodies for bacteria, nutrients, and/or pathogens as required by 33 USC, §1313(d); or

(G) the executive director determines that an individual water quality permit is appropriate considering other pertinent factors.

(c) Individual permit or general permit required. A discharge from any other CAFO shall be authorized either by an individual water quality permit or an applicable CAFO general permit. Except as provided by either subsection (e) or (f) of this section, any operator required to obtain an individual water quality permit or authorization under a CAFO general permit according to this subsection may not begin physical construction or operation of any new control facility until the CAFO operator receives an individual water quality permit or authorization under a CAFO general permit, unless otherwise authorized by the commission under TWC, §26.027(c).

(d) New or expanding AFO. After the effective date of this subchapter, no person may commence construction or operation of a new CAFO or alter any existing AFO such that it becomes defined as a CAFO without prior authorization through an individual water quality permit or a CAFO general permit, unless otherwise authorized by the commission under TWC, §26.027(c).

(e) Newly defined CAFO. An AFO that becomes classified as a CAFO after the effective date of this subchapter may not begin physical construction or operation of any new control facility until the CAFO operator receives authorization through an individual water quality permit or a CAFO general permit, unless otherwise authorized by the commission under TWC, §26.027(c).

(f) Dry litter poultry operations. Existing dry litter poultry operations must obtain authorization by an individual water quality permit or a CAFO general permit in accordance with subsection (a), (b), or (c) of this section not later than July 31, 2007.

(g) Facilities operating under an existing authorization. A CAFO currently authorized by registration must apply for an individual water quality permit before July 27, 2004 in order to continue to operate. An application for renewal of a registration is considered an application for an individual permit, so long as the application fee for an individual permit is paid. If such an application is timely filed, operation of the CAFO under the terms and conditions of the existing permit by rule will continue to be authorized, and authorization under the existing permit by rule does not expire, until final commission action on the permit application or until the CAFO qualifies for coverage under a general permit.

(h) Expansion or modification requirements. A CAFO operator authorized under an individual water quality permit shall comply with §305.62 of this title (relating to Amendment). Before the permittee begins physical construction or operation of any new control facility, the operator must obtain commission authorization. Changes for which a permit amendment is required include, but are not limited to:

(1) increasing the maximum number of animals authorized for confinement;

(2) increasing the wastewater storage volume; and

(3) adding land management units.

(i) AFOs that are not defined or designated as CAFOs. Discharges of manure, litter, or wastewater from an AFO that is not a CAFO as defined in this subchapter are authorized under this subchapter. Requirements applicable to these AFOs are described in §321.47 of this title (relating to Requirements for Animal Feeding Operations (AFOs) Not Defined or Designated As Concentrated Animal Feeding Operations (CAFOs)).

(j) Runoff from a land management unit.

(1) The runoff of manure, litter, or wastewater to water in the state from a CAFO as the result of the proper land application of that manure, litter, or wastewater to land management units

under the operator's control is subject to the requirements of this subchapter in accordance with paragraph (2) of this subsection.

(2) Where manure, litter, or wastewater is applied in accordance with a site-specific nutrient management plan that complies with §321.36(d) of this title (relating to Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feeding Operations (CAFOs)) or when the land application conforms to §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements), precipitation-related runoff from land management units under the control of a CAFO operator is authorized as:

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

(B) an agricultural storm water discharge for all other sources.

(k) Edwards Aquifer. New CAFOs are prohibited on the Edwards Aquifer recharge zone.

(l) Permit term. Individual and general permits issued under this subchapter shall be effective for a term not to exceed five years from the date the permit is issued. Any previously issued individual water quality permit or authorization by rule that did not include an expiration date shall expire 180 days after the effective date of this subchapter. The permittee shall comply with the requirements of subsection (g) of this section.

(m) Dual authorization. No person may concurrently hold both an individual water quality permit and authorization under a CAFO general permit for the same CAFO.

(n) Additional requirements. Authorization under this subchapter, a general permit, or an individual permit does not release the operator from any responsibilities or requirements under other federal, state, or local statutes or regulations.

(o) State-only authorizations. Any AFO that is a state-only CAFO, as defined by §321.32(13)(D) of this title (relating to Definitions) shall be authorized in accordance with subsection (a) or (b) of this section.

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

(a) Applicability. These requirements apply to a concentrated animal feeding operation (CAFO) general permit, individual water quality permit, or other authorization issued by the commission for a large CAFO, medium CAFO, and small CAFO subject to the requirements of the Texas Pollutant Discharge Elimination System.

(b) Permits. A CAFO shall comply with §305.125 of this title (relating to Standard Permit Conditions) and all applicable permit conditions contained in commission rules. Requirements to provide for and ensure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in an individual water quality permit on a case-by-case basis to

reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment.

(c) Control facility. A CAFO shall ensure that the control facility is designed, constructed, operated, and maintained to contain all manure, litter, and process wastewater including the runoff and direct precipitation from the design rainfall event as described in §321.37 of this title (relating to Effluent Limitations for Discharges from Production Areas).

(d) Nutrient management plan (NMP).

(1) On or before July 31, 2007, the operator of a CAFO shall develop and implement an NMP certified in accordance with the Natural Resources Conservation Service Code 590 Practice Standard. The plan shall include site-specific nutrient management practices that ensure appropriate agricultural utilization of nutrients in the manure, litter, or wastewater.

(2) The CAFO operator shall create, maintain for five years, and make available to the executive director, upon request, a copy of the site-specific NMP and documentation of the implementation.

(3) Compliance with the requirements of this section and applicable requirements for the design and operation of a control facility, as described in §321.38 and §321.39 of this title (relating to Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs) and Control Facility Operational Requirements Applicable to Concentrated Animal Feeding

Operations (CAFOs)) constitute compliance with the provisions of 40 Code of Federal Regulations (CFR) §122.42(e)(1)(i) - (ix).

(e) Manure, litter, and wastewater management.

(1) At least one representative sample of wastewater, if applicable, and one representative sample of manure/litter shall be collected and analyzed each year for total nitrogen, total phosphorus, and total potassium. The results of these analyses shall be used in determining application rates for manure in conjunction with analysis of wastewater.

(2) If manure, litter, or wastewater is sold or given to other persons for off-site land application or disposal, the CAFO operator shall maintain a log of:

(A) the date of removal from the CAFO;

(B) the name and address of the recipient; and

(C) the amount, in wet tons, dry tons, cubic yards, acre-inches, acre-feet, or gallons of manure, litter, or wastewater.

(3) A single pickup truck load need not be recorded.

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

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

(g) Soil sampling and testing.

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

(2) Annual sampling. The CAFO operator shall annually collect soil samples for each LMU owned, operated, controlled, rented, or leased by the CAFO operator where manure, litter, or wastewater was applied during the preceding year.

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

(A) Samples shall be collected using approved procedures described in the agency's publication "Soil Sampling for Nutrient Utilization Plans (RG-408)."

(B) Samples shall be collected by the operator or its designee and analyzed by a soil testing laboratory within the same 45-day time frame each year, except when crop rotations or inclement weather require a change in the sampling time frame.

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

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

(i) Zone 1: zero to six inches (for an LMU where the manure is incorporated directly into the soil) or zero to two inches (for an LMU where the manure is not incorporated into the soil). Wastewater is considered to be incorporated. If a zero to two-inch sample is required under this subsection, then an additional sample from the two to six-inch soil depth zone shall be obtained in accordance with the provisions of this section; and

(ii) Zone 2: six to 24 inches.

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

(h) Required inspections. The CAFO operator shall perform the routine inspections described in paragraphs (1) and (2) of this subsection to determine preventive maintenance and repair needs. 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.

(1) CAFO operators shall conduct a daily inspection of all water lines, including drinking water and cooling water lines, located within the drainage area of the retention control structure (RCS).

(2) CAFO operators shall conduct a weekly inspection of all control facilities and equipment used during that week for land application of manure, litter, or wastewater. An inspection must include all storm water diversion devices, runoff diversion structures, and devices channeling contaminated storm water to each RCS. The weekly inspection will note the level of liquid in each RCS as indicated by the pond marker required by subsection (k) of this section.

(i) Recordkeeping.

(1) The CAFO operator shall draft and maintain a report for five years in the pollution prevention plan to document the inspections and to report that appropriate action has been taken in response to deficiencies identified during any inspection required by subsection (h) of this section. A CAFO operator shall correct all the deficiencies within 30 days or shall document the factors preventing immediate correction.

(2) The CAFO operator shall maintain records describing mortality management practices implemented in accordance with subsection (l) of this section.

(3) The CAFO operator shall maintain documentation describing the sources of information, assumptions, and calculations used in determining the appropriate volume capacity and structural features of each RCS, including embankments and liners.

(4) The CAFO operator shall maintain documentation describing a discharge into water in the state including the date, time, volume of overflow, a copy of the notification(s) provided to the regional office, and sample analysis results associated with an RCS discharge.

(5) The CAFO operator shall comply with the land application area recordkeeping requirements identified in 40 CFR §412.37 and §412.47. Compliance with §321.46 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Pollution Prevention Plan, Site Evaluation, Recordkeeping, and Reporting) constitutes compliance with this requirement.

(j) Annual report required. An annual report shall be submitted to the executive director's Office of Compliance and Enforcement, Enforcement Division, by February 15 of each year (for the reporting period of January 1 to December 31 of the previous year) from each CAFO authorized under a CAFO general permit or through an individual water quality permit in accordance with this subchapter. The report shall be submitted on forms prescribed by the executive director and shall include, but is not limited to, the following information:

- (1) number and type of animals, whether in open confinement or housed under roof;
- (2) estimated total manure, litter, and wastewater generated during the reporting period;
- (3) total manure, litter, and wastewater land applied during the reporting period;
- (4) total manure, litter, and wastewater transferred to other persons during the reporting period;
- (5) total number of acres for land application under the control of the CAFO operator, including both the acres included in the NMP for the CAFO and the total number of acres used during the reporting period for land application;
- (6) summary of discharges of manure, litter, or wastewater from the production area that occurred during the reporting period including dates, times, and approximate volume;

(7) a statement indicating that the NMP under which the CAFO is operating was developed and approved by a certified nutrient management specialist;

(8) a copy of the initial soil analysis for each LMU, regardless of whether manure, litter, or wastewater has been applied;

(9) soil monitoring reports of all soil samples collected in accordance with the requirements of this subchapter;

(10) groundwater monitoring reports; and

(11) any other information requested by the executive director.

(k) Pond marker. A permanent pond marker that identifies the level of the design rainfall event shall be installed and maintained in the RCS. In addition, if the operator must maintain a minimum treatment volume in accordance with §321.43(j)(3)(B) of this title (relating to Air Standard Permit for Animal Feeding Operations (AFOs)), the pond marker must identify this level. The pond marker shall be visible from the top of the levee.

(l) Carcass disposal. Carcasses shall be collected within 24 hours of death and properly disposed of within three days of death in accordance with Texas Water Code, Chapter 26; Texas Health and Safety Code, Chapter 361; and Chapter 335 of this title (relating to Industrial Solid Waste and

Municipal Hazardous Waste) unless otherwise provided for by the commission. Animals must not be disposed of in any liquid manure or process wastewater system. Disposal of diseased animals shall also be conducted in a manner that prevents a public health hazard in accordance with Texas Agriculture Code, §161.004, and 4 TAC §31.3 and §58.31(b).

(m) Closure required. A closure plan must be developed by a CAFO operator when an RCS will no longer be used and when the CAFO ceases or plans to cease operation. For closure of a CAFO, a closure plan must be developed and submitted to the executive director when operation of the CAFO or an individual 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 Cooperative Extension/NRCS publication #B-6122 (Closure of Lagoons and Earthen Manure Storage Structures), as amended. A CAFO shall maintain or renew its existing authorization and maintain compliance with the requirements of this subchapter until the facility has been closed.