

The Texas Commission on Environmental Quality (TCEQ or commission) proposes the repeal of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED REPEALS

Chapter 321 authorizes the discharge of wastewater from certain activities into or adjacent to water in the state. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the United States Environmental Protection Agency (EPA) related to the Texas Pollutant Discharge Elimination System (TPDES) program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the United States (U.S.) under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. Certain subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by the TPDES program. This rulemaking repeals the subchapters that have been replaced by general permits and coverage is also available under a TPDES individual permit.

A corresponding rulemaking is published in this issue of the *Texas Register* and includes changes to 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits.

SECTION BY SECTION DISCUSSION

The proposed rulemaking would repeal Subchapter G, Subchapter H, Subchapter J, Subchapter K, Subchapter M, and Subchapter O in their entirety, in accordance with the directive indicated by the 1998

MOU between the TCEQ and EPA. These subchapters are no longer applicable and they have been replaced by the following TPDES general permits: Subchapter G is replaced by TPDES General Permit TXG670000; Subchapter H is replaced by TPDES General Permit TXG830000; Subchapter J is replaced by TPDES General Permit TXG110000; Subchapter K is replaced by TPDES General Permit TXG920000; Subchapter M is replaced by TPDES General Permit TXG340000; and Subchapter O is replaced by TPDES General Permit TXG130000.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Nina Chamness, Analyst, Strategic Planning and Assessment, has determined that, for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or other units of state or local governments as a result of administration or enforcement of the proposed rules. The proposed rules would eliminate rules governing wastewater discharges that have been replaced by general permits authorized under the Texas Pollutant Discharge Elimination System (TPDES).

The discharge of wastewater from certain activities into or adjacent to water in the state is authorized by 30 Texas Administrative Code (TAC), Chapter 321. In 1998, the commission entered into a Memorandum of Understanding (MOU) with the EPA related to the TPDES program. The MOU states that the TCEQ will not authorize TPDES discharges into waters of the U.S. under certain subchapters of 30 TAC Chapter 321, and that these subchapters may be repealed and replaced by general permits. As a result, some subchapters of Chapter 321 are now obsolete and/or do not meet the federal requirements for discharges into waters of the United States as required by TPDES. This rulemaking repeals the subchapters that have been replaced by general permits and discharges governed by TPDES individual

permits. In addition, this rulemaking amends parts of 30 TAC Chapter 50, Action on Applications and other Authorizations and 30 TAC Chapter 305, Consolidated Permits, as needed to coincide with the repeal of these obsolete subchapters.

PUBLIC BENEFITS AND COSTS

Ms. Chamness also determined that for each year of the first five years the proposed new rules are in effect, the public benefit anticipated from the changes in the proposed rules will be the elimination of extraneous rules that are no longer valid.

No fiscal implications are anticipated for regulated entities since they will still be required to comply with requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated for small or micro-businesses. Small or micro-businesses must still comply with the requirements that replaced the obsolete subchapters now being eliminated in this rulemaking.

LOCAL EMPLOYMENT IMPACT STATEMENT

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

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed repeals in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the repeals are not subject to §2001.0225 because they do not meet the criteria for a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

Chapter 321, Subchapters G, H, J, K, M, and O are specified for repeal because they are inactive, obsolete, and have been replaced by TPDES general permits. Therefore, it is not anticipated that the proposed repeals will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The commission concludes that these proposed repeals do not meet the definition of a "major environmental rule."

Furthermore, even if the proposed repeals did meet the definition of a major environmental rule, the proposed repeals are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four applicable requirements specified in §2001.0225(a). Section 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. The proposed repeals of §§321.101 - 321.109, 321.131 - 321.138, 321.151 - 321.159, 321.181 - 321.198, 321.231 - 321.240, and 321.271 - 321.280 will not cause any of the results listed in §2001.0225(a).

Under Texas Government Code, §2001.0225, only a major environmental rule requires a regulatory impact analysis. Because the proposed repeals do not constitute a major environmental rule, a regulatory impact analysis is not required.

The commission invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed repeals and performed an assessment of whether the proposed repeals constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed action is to repeal inactive and obsolete subchapters that have been replaced by general permits. The proposed repeals would substantially advance this stated purpose. Promulgation and enforcement of these proposed repeals would be neither a statutory nor a constitutional taking of private real property because the proposed repeals do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed repeals would eliminate unnecessary and obsolete rules. Because the repeals do not affect real property, they do not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the repeals. Therefore, these proposed repeals will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission determined that the repeals, which are procedural mechanisms for removing subchapters no longer applicable, are consistent with CMP goals and policies and will not have a direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation of the repeals will not violate (exceed) any standards identified in the applicable CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lisa Martin, Texas Register Team, Texas Commission on Environmental Quality, Office of Legal Services, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. Electronic comments may be submitted at <http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2006-051-321-PR. The comment period closes June 25, 2007. For further information, please contact Yvonna Pierce, Wastewater Permits Section, (512) 239-6922.

[SUBCHAPTER G: HYDROSTATIC TEST DISCHARGES]

[§§321.101 - 321.109]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into

or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

[\§321.101. Definitions.]

[The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Clean-up wastes--Liquid and solid wastes generated during initial clean-up of used facilities. This includes facility draining, flushing, purging, and chemical and mechanical cleaning wastes.]

[(2) Discharge--Deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.]

[(3) Facilities--Pipelines, tanks, and other vessels used in pipeline transportation, storage, or otherwise containment of raw materials or products.]

[(4) Grab sample--An individual sample collected in less than 15 minutes.]

[(5) Hydrostatic test discharges--Discharge into or adjacent to any water in the state of test water that is made following pressure testing of facilities.]

[(6) New facilities--Facilities which have not previously contained raw materials or products.]

[(7) TWC--Texas Water Commission.]

[(8) Used facilities--Facilities which have been used to store, transport, or otherwise contain a liquid or gaseous raw material or product.]

[(9) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.]

[\$321.102. Applicability.]

[(a) The purpose of this subchapter is to regulate by rule the discharges into or adjacent to water in the state of hydrostatic test water from facilities.]

[(b) This subchapter and other permitting requirements are not applicable to:]

[(1) discharges which are not into or adjacent to water in the state; and]

[(2) discharge into or adjacent to water in the state of hydrostatic test water from natural gas and crude oil facilities which are regulated by the Railroad Commission of Texas.]

[(c) This subchapter does not authorize the use of surface water for conducting the hydrostatic test. A separate application for temporary water use shall be submitted, as necessary, to the Texas Water Commission.]

[(d) For discharges into or adjacent to water in the state located in or within 10 stream miles upstream of the Edwards Aquifer recharge zone as defined in Chapter 313 of this title (relating to Edwards Aquifer), separate authorization may be required.]

[\$321.103. New Facilities.]

[(a) Registration not required.]

[(1) The test waters may be discharged into or adjacent to water in the state from new facilities without registration provided the following conditions are met:]

[(A) water used for the hydrostatic test as a minimum is of dischargeable quality as defined by §321.107(3) of this title (relating to Effluent Limitations);]

[(B) water used for the hydrostatic test does not contain corrosion inhibitors, anti-freeze compounds, or other chemical additives;]

[(C) the discharge is controlled at a rate to prevent flooding and/or erosion of the discharge area; and]

[(D) the discharge does not cause any nuisance conditions to adjacent land owners along the discharge route.]

[(2) Individual hydrostatic test discharge registration is not required for new facilities if test waters are disposed of in accordance with §321.104(a) of this title (relating to used Facilities).]

[(b) Registration required. Individual hydrostatic test discharge registration is required for new facilities that do not meet the conditions of subsection (a) of this section and shall be regulated by the requirements in §§321.105-321.107 of this title (relating to Registration; General Requirements for Discharges; and Specific Requirements for Discharges).]

[\S321.104. Used Facilities.]

[(a) Registration not required. Individual hydrostatic test discharge registration for used facilities is not required under the following provisions:]

[(1) hydrostatic test water is collected and/or transported to a wastewater treatment system that is permitted by the Texas Water Commission. The hydrostatic test water must be similar to other wastes treated in the treatment system and not likely to cause a permit violation;]

[(2) hydrostatic test water is collected and/or transported to a publicly owned treatment works permitted by the Texas Water Commission;]

[(3) hydrostatic test water is collected and/or transported to a disposal well that is permitted by the Texas Water Commission to receive such wastes; or]

[(4) hydrostatic test water which is discharged from facilities which formerly contained only elemental gases (e.g., hydrogen, oxygen, nitrogen, etc.) provided the requirements of \S321.103(a)(1)(A)-(D) of this title (relating to New Facilities).]

[(b) Registration required. Unless exempted by subsection (a) of this section, individual hydrostatic test registration is required for all discharges from used facilities and shall be regulated by the

requirements in §§321.105-321.107 of this title (relating to Registration, General Requirements for Discharges and Specific Requirements for Discharges).]

[§321.105. Registration.]

[(a) Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), a registration form as provided by the executive director must be submitted to the TWC Austin office prior to a discharge into or adjacent to water in the state. Submittal of the registration form is sufficient notice to initiate discharge in accordance with this subchapter.]

[(b) In the event of an emergency repair/replacement, a registration form may be submitted within five days after discharge.]

[§321.106. General Requirements for Discharges.]

[Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), the following general requirements apply.]

[(1) The discharger shall notify the appropriate TWC district office by telephone at least two days prior to discharge. For emergency facility repair or replacement, the discharger shall notify the appropriate TWC district office by telephone as soon as possible.]

[(2) The discharge shall not cause any nuisance conditions to adjacent landowners along the discharge route.]

[(3) The discharger shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TWC District Office that the discharge is presenting a hazard to the uses of the receiving water, the discharger shall terminate such discharge. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the TWC Austin and appropriate district office as soon as possible, but no later than 24 hours following their discovery. A written report shall be submitted to the TWC Austin and district offices within five working days. The report shall contain a description of the location; the exact date and time the problem was first identified; the potential danger to human health or safety, or the environment; the immediate steps that were taken to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the reoccurrence of similar problems during other hydrostatic test discharges. The discharge of hydrostatic test water shall not be acutely toxic to aquatic life.]

[(4) Concentration of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.]

[(5) Any earthen pits or surface impoundments used in conjunction with the disposal of hydrostatic test water shall be properly designed and constructed to prevent percolation and to protect groundwater in the state.]

[(6) Disposal of solid wastes including cleanup wastes shall be in accordance with the Solid Waste Disposal Act, Article 4477-7.]

[\$321.107. Specific Requirements for Discharges.]

[Unless exempted by §321.103(a) of this title (relating to New Facilities) or §321.104(a) of this title (relating to Used Facilities), the following specific requirements apply.]

[(1) Point of discharge.]

[(A) The discharge shall be to a splash pad to aerate the hydrostatic test water.]

[(B) All hydrostatic test water shall be discharged through a filter media, such as hay bales, for filtering of suspended solids. The filter media shall be properly located and anchored to prevent bypassing.]

[(C) The rate of discharge shall be controlled to prevent flooding and erosion.]

[(2) Monitoring.]

[(A) The discharger shall maintain authorized personnel at the site at all times to monitor and sample the discharge.]

[(B) Grab samples shall be collected in wide mouth, clear jars every two hours during the discharge and inspected for the appearance of oil and grease or the detection of a chemical odor. The discharge shall cease immediately if contamination is evident and the appropriate TWC district office shall be notified within 24 hours. The remaining test water shall be evaluated for additional treatment or alternate means of disposal.]

[(C) At least two grab samples for analysis shall be collected during the discharge. The initial grab sample shall be collected within the first hour of discharge, and the final grab sample shall be collected during the last hour of discharge. Individual samples shall be analyzed for chemical oxygen demand or total organic carbon, and the maximum concentration reported as required in paragraph (4) of this section. The sampling point shall be downstream of the filter media, or following any other treatment unit that may be utilized.]

[(D) Grab samples for oil and grease analysis shall be collected during the first and last hours of the discharge. Each sample shall be analyzed separately and the maximum oil and grease concentration reported as required in paragraph (4) of this section. The sampling point shall be downstream of the filter media, or following any other treatment unit that may be utilized.]

[(E) Grab samples for pH analysis shall be collected once each day of discharge and reported as required in paragraph (4) of this section. The sample point shall be downstream of the filter, or following any other treatment unit that may be utilized.]

[(F) All sample collection shall be conducted according to recommendations found in the latest edition of Standard Methods for the Examination of Water and Wastewater (prepared and published jointly by the American Public Health Association, the American Waterworks Association, and the Water Pollution Control Federation), or Environmental Protection Agency, Methods for Chemical Analysis of Water and Wastes (1979), or Environmental Protection Agency, Biological Field and Laboratory Methods for Measuring the Quality of Surface Waters and Effluents (1973).]

[(G) Sample containers, holding times, preservation methods, and the physical, chemical, and microbiological analyses of effluents shall meet the requirements specified in regulations published in 40 Code of Federal Regulations Part 136, pursuant to the Federal Water Pollution Control Act, §304(g), and be conducted according to this federal regulation or the latest edition of Standard Methods for the Examination of Water and Wastewater.]

[(3) Effluent limitations.]

[(A) The following daily maximum effluent limitations apply to all discharges of hydrostatic test water:]

[Figure: 30 TAC §321.107(3)(A)]

<u>Parameter</u>	<u>Daily Maximum Limitation</u>	<u>Sample Type</u>
Chemical Oxygen Demand*	250 mg/l	Grab
Total Organic Carbon*	85 mg/l	Grab
Oil and Grease	15 mg/l	Grab

[* Analyze and report either Chemical Oxygen Demand or Total Organic Carbon]

[(B) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units.]

[(C) There shall be no discharge of floating solids or visible foam other than in trace amounts, and no discharge of visible oil.]

[(4) Reporting. All analytical results shall be reported to the TWC Austin office on the "Hydrostatic Test Report" form provided by the executive director. All violations of effluent limitations shall be noted on the form and plans discussed to prevent similar violations during other hydrostatic test discharges. Results shall be submitted to the commission within 25 days after termination of the discharge.]

[\\$321.108. Restrictions.]

[This subchapter does not convey property rights of any sort and does not grant any exclusive privilege.]

[\$321.109. Enforcement.]

[If a discharger fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code, and the rules of the commission.]

**[SUBCHAPTER H: DISCHARGE TO SURFACE WATERS FROM TREATMENT OF
PETROLEUM SUBSTANCE CONTAMINATED WATERS]**

[§§321.131 - 321.138]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

[\§321.131. Definitions.]

[The following words and terms, when used in this subchapter (relating to the Discharge to Surface Waters from Treatment of Petroleum Substance Contaminated Water), shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Aboveground storage tank (or AST)--A nonvehicular device (including any associated piping) that is made of nonearthen materials; located on or above the surface of the ground, or on or above the surface of the floor of a structure below ground, such as a mineworking, basement, or vault; and designed to contain an accumulation of petroleum substances.]

[(2) Free product--Floating gasoline, diesel fuel, fuel oil, kerosene, jet fuel or other petroleum substance.]

[(3) Gasoline--Leaded or unleaded gasoline, all grades of aviation gasoline and all grades of gasohol.]

[(4) Grab sample--An individual sample collected in less than 15 minutes.]

[(5) Groundwater pump test--Short term pumping of groundwater to determine physical characteristics of an aquifer.]

[(6) Groundwater remediation--Treatment of contaminated groundwater to remove free product and to reduce or eliminate groundwater contamination.]

[(7) Motor fuel--A petroleum substance which is typically used for the operation of internal combustion engines (including stationary engines and engines used in transportation vehicles and marine vessels), and which is one of the following types of fuels: leaded or unleaded gasoline, aviation gasoline, Number 1 diesel fuel, Number 2 diesel fuel, and any grades of gasohol.]

[(8) Operator--Any person in control of or having responsibility for the daily operation of an aboveground or underground storage tank system, facility, pipeline or vessel.]

[(9) Owner--Any person who currently holds legal possession or ownership of a total or partial interest in an aboveground storage tank (AST) or underground storage tank system (UST) or any person, individual, partnership, corporation, association, governmental unit, or public or private organization of any charter owning, operating or responsible for operating, or chartering by demise a vessel and or pipeline, owning, operating or responsible for operating a facility or operating a facility by lease, contract, or other form of agreement. For the purpose of the subchapter, where the actual ownership of an AST or UST system is either uncertain, unknown, or in dispute, the fee simple owner of the surface estate where the AST or UST is located shall be considered the AST or the UST system owner, unless the

owner of the surface estate can demonstrate by appropriate documentation (deed reservation, invoice, bill of sale, etc.) or by other legally-acceptable means that the AST or the UST system is owned by others.

"Other" does not include a person who holds an interest in an AST or UST system solely for financial security purposes unless, through foreclosure or other related actions, the holder of such security interest has taken legal possession of the AST or UST system. Additionally, this definition does not include a person who owns only the land underlying a facility or a person who owns a security interest in a facility, pipeline or vessel if the person does not participate in the operation of the facility, pipeline or vessel, does not own a controlling interest in the owner or operator of the facility, pipeline or vessel and is not controlled by or under common ownership with the owner or operator of the facility, pipeline or vessel.]

[(10) Petroleum fuel--Gasoline, diesel fuel, fuel oil, kerosene, and jet fuel.]

[(11) Petroleum substance--A crude oil or any refined or unrefined fraction or derivative of crude oil which is liquid at standard conditions of temperature and pressure, and is limited to one or a combination of the substances or mixtures in the following list (except for any substance regulated as a hazardous waste under §335.1 of this title (relating to Definitions)).]

[(A) Basic petroleum substances--Crude oils, crude oil fractions, petroleum feedstocks, and petroleum fractions.]

[(B) Motor fuels--(See definition for "motor fuel" in this section.)]

[(C) Aviation gasolines--Grade 80, Grade 100, and Grade 100-LL.]

[(D) Aviation jet fuels--Jet A, Jet A-1, Jet B, JP-4, JP-5, and JP-8.]

[(E) Distillate fuel oils--Number 1-D, Number 1, Number 2-D, and Number 2.]

[(F) Residual fuel oils--Number 4-D, Number 4-light, Number 4, Number 5-light,
Number 5-heavy, and Number 6.]

[(G) Gas-turbine fuel oils--Grade 0-GT, Grade 1-GT, Grade 2-GT, Grade 3-GT,
and Grade 4-GT.]

[(H) Illuminating oils--Kerosene, mineral seal oil, long-time burning oils, 300 oil,
and mineral colza oil.]

[(I) Solvents--Stoddard solvent, petroleum spirits, mineral spirits, petroleum
ether, varnish makers' and painters' naphthas, petroleum extender oils, and commercial hexane.]

[(J) Lubricants--Automotive and industrial lubricants.]

[(K) Building materials--Liquid asphalt and dust-laying oils.]

[(L) Insulating and waterproofing materials--Transformer oils and cable oils.]

[(M) Used oils--(See definition for "used oil" in this section.)]

[(N) Any other petroleum-based material having physical and chemical properties similar to the above materials and receiving approval by the executive director for designation as a petroleum substance.]

[(O) Examples of materials which are not petroleum substances include: aldehydes and ketones (e.g., acetone, methyl ethyl ketone); halogenated solvents (e.g., carbon tetrachloride, trichloroethylene), alcohols (e.g., methanol), phenols, nitrogen-containing compounds and transformer oils containing polychlorinated biphenyl compounds.]

[(12) Petroleum Substance Contaminated Water Report--A form provided the responsible party or their agent by the executive director in response to the filing of a registration form to enable compliance with the reporting requirements of this subchapter.]

[(13) Registration Form--An application form provided by the executive director, that must be completed and submitted by the responsible party or their agent, for the purpose of discharging petroleum substance contaminated water pursuant to the authorization provided by this subchapter. Any person signing as an agent must have the express authority of the responsible party to sign the registration form and/or petroleum substance contaminated water report form. The signature of the responsible party

or their agent on the registration form and/or petroleum substance contaminated water report form must be an original, preferably in blue ink.]

[(14) Responsible Party--The operator or the owner as defined in this subsection or any person having responsibility for or exercising control over activities covered by this subchapter.]

[(15) Tank tests--Integrity testing of aboveground and/or underground storage tanks.]

[(16) TNRCC--Texas Natural Resource Conservation Commission.]

[(17) Underground storage tank--Any one or combination of underground tanks and any connecting underground pipes used to contain an accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.]

[(18) Underground storage tank system--An underground storage tank, all associated piping and ancillary equipment, spill and overflow prevention equipment, release detection equipment, corrosion protection system, secondary containment equipment (as applicable), and all other related systems and equipment.]

[(19) Used oil--Any oil or similar petroleum substance that has been refined from crude oil, used for its designed or intended purposes, and contaminated as a result of such use by physical or

chemical impurities; and including spent motor vehicle and aircraft lubricating oils (e.g., car and truck engine oil, transmission fluid, and brake fluid), spent industrial oils (e.g., compressor, turbine, bearing, hydraulic, metalworking, gear, electrical, and refrigerator oils), and spent industrial process oils.]

[(20) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounded waters, springs, rivers, streams, creeks, wetlands, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all water courses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.]

[\§321.132. Applicability.]

[(a) The purpose of this subchapter is to regulate by rule the surface discharge of water contaminated by a release of a petroleum substance into or adjacent to water in the state, within the statutory jurisdiction of the commission to regulate and not otherwise prohibited elsewhere in the rules of the commission, and:]

[(1) subject to the conditions of §321.133 of this title (relating to Discharge of Water Contaminated by Gasoline, Jet Fuel or Kerosene); or]

[(2) subject to the conditions of §321.134 of this title (relating to Discharge of Water Contaminated by Other Petroleum Substances).]

[(b) Commission registration in accordance with §321.133 or §321.134 of this title is not required if one of the following conditions exists:]

[(1) free product is removed and the remaining contaminated water is routed to an existing commission permitted wastewater treatment system capable of treating the wastes;]

[(2) petroleum substance contaminated water is land applied on-site with no runoff if:]

[(A) the volume to be land applied is 500 gallons or less during any quarter. However, the general and specific conditions of §321.133 or §321.134 of this title, excluding notification of the commission region office, monitoring/reporting requirements, and any other condition not appropriate to the land application of petroleum substance contaminated water, shall apply to any discharge. The responsible party must be able to demonstrate that any discharge under this exclusion was compliant with discharge limits based on laboratory analysis or the petroleum substance contaminated water is treated by a properly operated and maintained system to produce a compliant effluent; and]

[(B) the discharge does not violate local ordinances;]

[(3) the discharge is drainage from a facility where preparation and implementation of a Spill Prevention Control and Counter-measure Plan is required under 40 Code of Federal Regulations, Part 112;]

[(4) the discharge is performed in accordance with §321.135 of this title (relating to Telephone Utilities); or]

[(5) exempted by the executive director on a case-by-case basis.]

[(c) For discharges located in or within ten miles upstream of the Edwards Aquifer recharge zone as defined in Chapter 313 of this title (relating to Edwards Aquifer), the executive director may require a responsible party to obtain a permit or other authorization from the commission for such a discharge, in accordance with §321.138 of this title (relating to Reservation).]

[(d) An application for an emergency order, temporary order, or permit as provided by Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) must be submitted and the order or permit issued either before water contaminated by any substance not regulated by this subchapter can be discharged or as an alternative to compliance with the requirements of this subchapter.]

[(e) Regardless of whether registration is required, no person may discharge water in excess of the limitations specified in this subchapter. Any discharge that does not comply with the applicable provision of this subchapter is subject to enforcement proceedings.]

[(f) A surface discharge may occur during groundwater pump tests, groundwater remediation, tank tests, on-site soil remediation activities, cleanup activities following the release of one or more petroleum substances occurring during transport, removal of water from a tank previously containing a petroleum substance and/or other activities including the removal of petroleum substance contaminated water from groundwater wells, excavations and utility vaults, etc.]

[§321.133. Discharge of Water Contaminated by Gasoline, Jet Fuel or Kerosene.]

[(a) Registration. Except as provided in §321.132 of this title (relating to Applicability) and §321.135 of this title (relating to Telephone Utilities), a registration form must be submitted to the Watershed Management Division, TNRCC Austin office prior to discharge. Submittal of the registration form is acknowledgment that the responsible party or their agent has determined that the requirements of this subchapter are applicable to the proposed discharge, and that all requirements for discharge will be satisfied. Submittal of a registration form is sufficient notice to initiate discharge in accordance with this subchapter to include compliance with subsections (b) and (c) of this section.]

[(b) General Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following general requirements apply.]

[(1) The responsible party shall notify the appropriate TNRCC regional office at least 24 hours prior to initiating the discharge.]

[(2) There shall be no discharge of free product.]

[(3) Disposal of solid wastes shall be in accordance with Chapter 361 of the Texas Health and Safety Code.]

[(4) The discharge shall not cause any nuisance conditions to land owners along the discharge route.]

[(5) The responsible party shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TNRCC regional office that the discharge is presenting a hazard to the uses of the receiving water, the responsible party shall terminate such discharges. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the Watershed Management Division, TNRCC Austin office and appropriate regional office as soon as possible but no later than 24 hours following their discovery. A written report shall be submitted to the TNRCC Austin and regional offices within five working days of the discovery of a problem. The report shall contain a description of the location; the exact date and time the problem was first identified; the potential danger to human health or safety, or the environment; the

immediate steps that were taken to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the recurrence of similar problems with further discharge events.]

[(6) Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.]

[(c) Specific Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following specific requirements apply.]

[(1) Point of discharge.]

[(A) All surface discharges shall be to a splash pad to aerate the treated water.]

[(B) The rate of discharge shall be controlled to prevent flooding and erosion.]

[(2) Effluent limitations and monitoring requirements.]

[(A) The following maximum effluent limitations and minimum monitoring requirements apply to the discharge of petroleum substance contaminated water:]

[Figure: 30 TAC §321.133(c)(2)(A)]

Parameter	Limitation	Sample Type	Monitoring Frequency
Total Petroleum Hydrocarbons	15 mg/l	Grab	One/week (*1)
Total Lead	0.25 mg/l	Grab	One/week (*1)
Benzene	0.05 mg/l	Grab	One/week (*1)
Total BTEX (*2)	0.50 mg/l	Grab	One/week (*1)

[(*) The executive director may authorize a reduced monitoring frequency of twice/month upon request where demonstrated compliance with limitations has been maintained for a minimum of 6 months. If the responsible party fails to maintain compliance with discharge limits once a reduced monitoring frequency has been approved, the executive director may direct the responsible party to resume weekly monitoring.]

[(*) Benzene, Toluene, Ethylbenzene, Total Xylene]

[(B) If the responsible party or their agent determines through sample collection and analysis that the wastewater is not contaminated with lead or lead compounds then such information shall be noted on the registration form and continued analysis for lead or lead compounds is not required.]

[(C) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be measured once per week by grab sample. The petroleum substance contaminated water report form does not require that pH be reported; however, records must be maintained to demonstrate compliance with this requirement.]

[(D) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.]

[(E) All samples shall be collected after any final treatment unit that may be used.

All sample collection shall be conducted in accordance with the requirements of §319.11 of this title (relating to Sampling and Laboratory Test Methods).]

[(F) Sample containers, holding times, preservation methods and the physical, chemical and microbiological analyses of effluent shall meet the requirements specified in regulations published in 40 Code of Federal Regulations Part 136 pursuant to the Federal Water Pollution Control Act, §304(g), and be conducted according to this federal regulation or the latest edition of "Standard Methods for the Examination of Water and Wastewater."]

[(3) Reporting Requirements. All analytical results shall be reported to the Watershed Management Division, TNRCC Austin office using the "Petroleum Substance Contaminated Water Report" form provided by the executive director. Results of sampling activities shall be submitted to the TNRCC no later than the 20th day of the month following the discharge unless the discharge occurs one day per quarter based on the frequency of discharge noted on the registration form and reports for these discharges are due no later than the 20th day in the months of April, July, October, and January. Any report form reflecting that a discharge limit was exceeded must be accompanied by a report prepared in accordance with subsection (b)(5) of this section.]

[§321.134. Discharge of Water Contaminated by Other Petroleum Substances.]

[(a) Registration. Except as provided in §321.132 of this title (relating to Applicability) and §321.135 of this title (relating to Telephone Utilities), a registration form must be submitted to the Watershed Management Division, Texas Natural Resource Conservation Commission (TNRCC) Austin office. The registration form shall be submitted a minimum of 60 days prior to the expected date of discharge, except for:]

[(1) an emergency as defined in Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) where the registration form may be submitted at any time but a discharge cannot occur until approved by the executive director or designated representative as provided by this section; or]

[(2) water contaminated by a diesel release may be discharged upon the submission of the registration form less the following items but subject to the discharge limits and the monitoring/reporting requirements of this section and shall include:]

[(A) analytical test results for Total Petroleum Hydrocarbons, Total Lead, Benzene, Total BTEX, Polynuclear Aromatic Hydrocarbons and pH;]

[(B) an original USGS Topographic map; and]

[(C) a written description of the discharge route. Submittal of the registration form (excluding diesel fuel contaminated water) does not constitute an authorization to discharge. The

commission will review requests for registration on a case-by-case basis and may request additional information, including additional sampling and analytical data. Submittal of a registration form is acknowledgment that the responsible party or their agent has determined that the requirements of this subchapter are applicable to the proposed discharge, and that all criteria for discharge will be satisfied. If the registration is approved, the executive director or designated representative shall notify the responsible party or their agent in writing and this notification shall constitute an authorization to discharge wastewater. Requirements in addition to those listed in subsection (c)(2)(A) of this section may be specified on a case-by-case basis.]

[(b) General Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following general requirements apply.]

[(1) The responsible party or their agent upon receipt of approval to discharge and prior to the discharge shall notify the appropriate TNRCC regional office at least 24 hours prior to initiating the discharge.]

[(2) There shall be no discharge of free product.]

[(3) Disposal of solid wastes shall be in accordance with the Texas Health and Safety Code, Chapter 361.]

[(4) The discharge shall not cause any nuisance conditions to land owners along the discharge route.]

[(5) The responsible party or their agent shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TNRCC regional office that the discharge is presenting a hazard to the uses of the receiving water, the responsible party or their agent shall terminate such discharges. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the Watershed Management Division, TNRCC Austin office and the appropriate regional office as soon as possible but no later than 24 hours following their discovery. A written report shall be submitted to the TNRCC Austin and regional office within five working days of the discovery of a problem. The report shall contain a description of the location; the exact date and time the problem was first identified; the potential danger to human health or safety, or the environment; the immediate steps that were taken to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the recurrence of similar problems with further discharge events.]

[(6) Concentrations of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.]

[(c) Specific Requirements for Discharge. Except as provided in §321.135 of this title (relating to Telephone Utilities), the following specific requirements apply.]

[(1) Point of discharge.]

[(A) All surface discharges shall be to a splash pad to aerate the treated water.]

[(B) The rate of discharge shall be controlled to prevent flooding and erosion.]

[(2) Effluent limitations and monitoring requirements.]

[(A) The following maximum effluent limitations and minimum monitoring requirements apply to the discharge of water:]

[Figure: 30 TAC §321.134(c)(2)(A)]

Parameter	Limitation	Sample Type	Monitoring Frequency
Total Petroleum Hydrocarbons	15 mg/l	Grab	One/week (*1)
Total Lead	0.25 mg/l	Grab	One/week (*1)
Benzene	0.05 mg/L	Grab	One/week (*1)
Total BTEX (*2)	0.50 mg/l	Grab	One/week (*1)
Polynuclear Aromatic Hydrocarbons (*3)	0.01 mg/l	Grab	One/month (*4)

[(*1) The executive director may authorize a reduced monitoring frequency of twice/month upon request where demonstrated compliance with limitations has been maintained for a minimum of 6 months. If the responsible party fails to maintain compliance with discharge limits once a reduced monitoring frequency has been approved, the executive director may direct the responsible party to resume weekly monitoring].

[(*2) Benzene, Toluene, Ethylbenzene, Total Xylene]

[(*3) Polynuclear Aromatic Hydrocarbons: acenaphthene, acenaphthylene, anthracene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, benzo(ghi)perylene, benzo(a)pyrene, chrysene, dibenzo(a,h)anthracene, fluoranthene, fluorene, indeno(1,2,3-cd)pyrene), naphthalene, phenanthrene, pyrene.]

[(*4) The executive director may authorize a reduced monitoring frequency of once/three months upon request where demonstrated compliance with limitations has been maintained for a minimum of 6 months.]

[(B) If the responsible party or their agent determines through sample collection and analysis that the wastewater is not contaminated with lead or lead compounds then such information shall be noted on the registration form and continued analysis for lead or lead compounds is not required.]

[(C) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be measured once per week by grab sample. The petroleum substance contaminated water report form does not require that pH be reported; however, records must be maintained to demonstrate compliance with this requirement.]

[(D) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.]

[(E) Discharge of wastewater shall cease within 24 hours of the time that the responsible party or their agent learns that any one of the polynuclear aromatic hydrocarbons has been detected at a concentration of 0.01 mg/liter or greater. A written report shall be provided to the TNRCC Austin and regional office within five working days. Discharge may not be resumed under the provisions

of this subchapter without written authorization from the executive director. The executive director may require the responsible party to obtain a permit from the commission for such a discharge.]

[F] All samples shall be collected after any final treatment unit that may be used. All sample collection shall be conducted in accordance with the requirements of §319.11 of this title (relating to Sampling and Laboratory Test Methods).]

[G] Sample containers, holding times, preservation methods and the physical, chemical and microbiological analyses of effluent shall meet the requirements specified in regulations published in 40 Code of Federal Regulations Part 136 under the Federal Water Pollution Control Act, §304(g), and be conducted according to this federal regulation or the latest edition of "Standard Methods for the Examination of Water and Wastewater."]

[(3) Reporting Requirements. All analytical results shall be reported to the Watershed Management Division, TNRCC Austin office using the "Petroleum Substance Contaminated Water Report" form provided by the executive director. Results of sampling activities shall be submitted to the commission no later than the 20th day of the month following the discharge unless the discharge occurs one day per quarter based on the frequency of discharge noted on the registration form and reports for these discharges are due no later than the 20th day in the months of April, July, October, and January. Any report form reflecting that a discharge limit was exceeded must be accompanied by a report prepared in accordance with subsection (b)(5) of this section.]

§321.135. Telephone Utilities.

[(a) Registration Not Required. Telephone utilities are exempt from registration pursuant to §321.133 of this title (relating to Discharge of Water Contaminated by Gasoline, Jet Fuel or Kerosene) and §321.134 of this title (relating to Discharge of Water Contaminated by Other Petroleum Substances) for the discharge of water contaminated by Gasoline, Jet Fuel, Kerosene or Diesel. The following general requirements apply to discharges from utility vaults.]

[(1) There shall be no discharge of free product. Free product shall be collected, reused, or disposed of in accordance with state law.]

[(2) If the responsible party or their agent detects the presence of any hydrocarbon vapors as indicated by standard explosimeter test, the responsible party or their agent shall air purge the vault before discharging its contents. Following this initial air purging, the responsible party or their agent shall again perform a standard explosimeter test. If this second test reveals the presence of hydrocarbon vapors, the responsible party or their agent shall take a water sample and have a laboratory analysis made to determine whether the Benzene concentration is equal to or greater than 0.05 mg/liter or the Total BTEX concentration is equal to or greater than 0.50 mg/liter. If the analysis confirms an exceedance of the Benzene or BTEX concentration in the water, the entire contents of the utility vault may not be discharged under this subsection but must be disposed of in some other legal manner.]

[(3) Disposal of solid wastes shall be in accordance with the Texas Health and Safety Code, Chapter 361.]

[(4) The discharge shall not cause any nuisance conditions to land owners along the discharge route.]

[(5) The responsible party or their agent shall take all steps necessary to prevent any adverse effect to human health or safety, or to the environment. Immediately upon the notification from the supervisor of the TNRCC regional office that the discharge is presenting a hazard to the uses of the receiving water, the responsible party or their agent shall terminate such discharges. The discharge shall cease immediately whenever problems associated with the discharge may endanger human health or safety, or the environment, and the problems shall be reported to the Watershed Management Division, TNRCC Austin office and appropriate regional office as soon as possible but no later than 24 hours following their discovery. A written report shall be submitted to the TNRCC Austin and regional office within five working days of the discovery of a problem. The report shall contain a description of the location; the exact date and time the problem was first identified; the potential danger to human health or safety, or to the environment; the immediate steps that were taken to correct the problem; steps planned and/or taken to mitigate any adverse effects; and plans to prevent the recurrence of similar problems with further discharge events.]

[(6) Concentration of taste and odor producing substances shall not interfere with the production of potable water by reasonable water treatment methods, impart unpalatable flavor to food fish

including shellfish, result in offensive odors arising from the waters, or otherwise interfere with the reasonable use of the water in the state.]

[(b) Registration Required. If concentration of Benzene is 0.05 mg/liter or greater and/or Total BTEX is equal to or greater than 0.50 mg/liter, the telephone utility may elect to submit a registration in accordance with §321.133 or §321.134 of this title to discharge water contaminated by Gasoline, Jet Fuel, Kerosene or Diesel.]

§321.136. Restrictions.]

[(a) This subchapter does not convey property rights of any sort and does not grant any exclusive privilege.]

[(b) The responsible party or their agent may not cause a discharge to a domestic sewage treatment plant and/or a separate storm sewer system without first obtaining the approval of the owner of the sewage treatment plant and/or separate storm sewer system. Air emissions for any activity regulated by this subchapter must be in accordance with TNRCC air regulations.]

§321.137. Enforcement.]

[If a responsible party or their agent fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code, and the rules of the TNRCC. Any penalty imposed or technical measures required by an order of the TNRCC for violation of this subchapter is not eligible for reimbursement from any fund administered by the TNRCC.]

[§321.138. Reservation.]

[The executive director may on a case-by-case basis, where conditions warrant, prohibit the discharge of petroleum substance contaminated water under this subchapter and require that the owner obtain an individual permit or seek other authorization to discharge from the TNRCC, or dispose of the water in some other legal manner. Additionally, the executive director may cancel, revoke or suspend authorization to discharge under this subchapter where the owner has discharged water in significant noncompliance of discharge limits, has had a history of noncompliance of discharge limits or has a history of failing to submit the petroleum substance contaminated water report within the time requirement specified in this subchapter.]

**[SUBCHAPTER J: DISCHARGES TO SURFACE WATERS FROM
READY-MIXED CONCRETE PLANTS AND/OR CONCRETE
PRODUCTS PLANTS OR ASSOCIATED FACILITIES]**

[§§321.151 - 321.159]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

[\§321.151. Definitions.]

[The following words and terms used in this subchapter shall have the following meanings unless the context clearly indicates otherwise.]

[(1) Associated Facilities--Facilities associated with ready-mixed concrete plants or concrete products plants and establishments where maintenance and washing of ready-mix vehicles (both interior and exterior) or equipment occurs.]

[(2) Concrete Products Plants--Facilities primarily engaged in manufacturing concrete products as classified per Standard Industrial Classification (SIC) code 3272, and facilities primarily engaged in manufacturing concrete building blocks and bricks from a combination of cement and aggregate as per SIC code 3271.]

[(3) Contact Storm water--Storm water which comes in contact with any raw material, product, by-product, co-product, intermediate, or waste material.]

[(4) Domestic Sewage--Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.]

[(5) Existing Facilities--Ready-mixed concrete plants, concrete products plants and associated facilities in active operation, including the discharge of facility wastewater, prior to January 5, 1996.]

[(6) Facility Wastewater--Any wastewater which is generated at ready-mixed concrete plants, concrete products plants, or associated facilities authorized by this rule, but not including domestic sewage.]

[(7) Grab Sample--An individual sample collected in less than 15 minutes.]

[(8) MGD--Million gallons per day.]

[(9) Mg/l--Milligrams per liter.]

[(10) New Facilities--Ready-mixed concrete plants, concrete products plants and associated facilities not defined in this section as existing facilities.]

[(11) Point Source Discharge--A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.]

[(12) Publicly Owned Treatment Works or "POTW"--A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.]

[(13) Registrant--An individual or entity authorized by the executive director to discharge facility wastewater and contact storm water from ready-mixed concrete plants, concrete products plants, or associated facilities under the terms and requirements of this subchapter.]

[(14) Ready-Mixed Concrete Plants--Facilities, including temporary concrete batch plants, primarily engaged in mixing and delivering ready-mixed concrete as classified per Standard Industrial Classification code (SIC) 3273.]

[(15) Storm water--Storm water runoff, snow melt runoff, surface runoff, and drainage.]

[(16) Temporary Concrete Batch Plants--Ready-mixed concrete plants temporarily located to be in proximity to a particular customer or construction site.]

§321.152. Purpose and Applicability.]

[(a) The purpose of this subchapter is to regulate by rule discharges of facility wastewater and contact storm water to surface water in the state from ready-mixed concrete or concrete products plants and their associated facilities under the terms and requirements of this subchapter. Certificates of registration issued under this subchapter are subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director).]

[(b) Discharges are allowable under this subchapter only by registrants of those facilities which have a certificate of registration issued by the executive director under §321.153 of this title (relating to Certificate of Registration), §321.154 of this title (relating to General Requirements for Discharge) and §321.155 of this title (relating to Specific Requirements for Discharge).]

[(1) For new facilities, a certificate of registration issued by the executive director under §321.153 of this title, §321.154 of this title, and §321.155 of this title shall be obtained prior to discharge of wastewater from the subject facility.]

[(2) Existing facilities currently operating under a valid agency wastewater discharge permit may apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final registration, the executive director shall void the permit.]

[(3) An existing facility that does not hold a valid agency wastewater discharge permit must submit an application for registration or an application for a permit within 365 days after the date this rule takes effect.]

[(c) If the executive director denies a registration application under this subchapter, the facility must obtain a permit under Texas Water Code, Chapter 26.]

[(d) Facilities which do not meet the requirements of §321.154 and §321.155 of this title and do not discharge or transport facility wastewater to a publicly owned treatment works (POTW) which has a wastewater discharge permit issued by the executive director must apply for an emergency order, temporary order, or permit as provided by Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for the discharge of wastewater into or adjacent to water in the state.]

§321.153. Certificate of Registration and Public Notice.]

[(a) An applicant must apply for registration on a form approved by the agency. A completed application shall be submitted to the agency's Wastewater Permits Section (MC 148). Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.154 of this title (relating to General Requirements for Discharge) and §321.155 of this title (relating to Specific Requirements for Discharge).]

[(b) The executive director may take action on an application to issue a certificate of registration, provided:]

[(1) At least 30 days prior to approving an application and issuing the certificate of registration, notice of the application has been provided by the applicant, at the applicant's cost:]

[(A) in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located;]

[(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and]

[(C) the notices of application are provided in a format approved by the commission and shall fairly set forth the substance of the application and proposed action, including but not limited to, the general location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting comment, on the application.]

[(2) With any application for a registration, submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information, which shall consist of:]

[(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and]

[(B) a sworn statement from the applicant that written notice was mailed to the appropriate entities, identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.]

[(3) The application, including the material required by paragraph (2) of this subsection, shall be mailed to the agency's Wastewater Permits Section (MC 148). The application shall undergo review by the executive director following the determination that notice requirements of this section are met.]

[(4) Any pertinent comments received by the executive director prior to the end of the 30-day period, after all the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any other person who submitted comments on the application.]

[(c) The public notice provisions of this section do not apply to a facility which is operating under an agency wastewater discharge permit if the facility applies for registration prior to the expiration date of the permit.]

[(d) Public notice provisions of this section do not apply to an existing facility which is not operating under an agency wastewater discharge permit if an application for registration is received by the executive director within 365 days after the date this rule takes effect.]

[\$321.154. General Requirements for Discharge.]

[(a) Only contact storm water, facility wastewater, and treated facility wastewater which meet the requirements of this subchapter can be discharged into water in the state.]

[(b) Facility wastewater and contact storm water shall be treated as required to conform to effluent discharge requirements, including a reduction of total suspended solids, oil and grease, and other possible pollutants and, if necessary, adjustment of pH.]

[(c) This rule does not authorize the discharge of domestic sewage into water in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drain field system, POTW, transported to an approved off-site disposal facility, or disposed of in accordance with an approved agency order or permit.]

[(d) Sludge and solid waste, including tank and truck cleaning and contaminated solids for disposal, shall be disposed of in accordance with Chapter 361 of the Texas Health and Safety Code.]

[(e) The discharge shall not cause any nuisance conditions.]

[(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following:]

[(1) The registrant shall report any noncompliance (including any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the agency's regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the agency's regional office and to the agency's Water Section, Enforcement Division (MC 149), within five working 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.]

[(2) Any noncompliance which is greater than 40% of the authorized effluent limitations as expressed in §321.155(a) of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the agency's regional office and to the agency's Water Section, Enforcement Division (MC 149) within five working days of becoming aware of the condition.]

[(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the agency's Wastewater Permits Section (MC 148).]

[(h) The executive director may deny an application for registration on the following grounds: the potential or actual adverse impact or close proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such determination, the executive director may also consider other factors, as necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.]

[(i) The discharge shall not be acutely toxic to aquatic life, as described in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).]

[§321.155. Specific Requirements for Discharge.]

[(a) Facilities regulated under this rule are authorized to discharge treated facility wastewater and contact storm water in accordance with the following maximum limitations and monitoring requirements:]

[Figure: 30 TAC §321.155(a)]

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring</u>
Flow (MGD)	(Report)	Estimate	1/month*
Oil and Grease	15 mg/l	Grab	1/month*
Total Suspended Solids	65 mg/l	Grab	1/month*

[* When discharge occurs.]

[(b) The pH of the discharge shall not be less than 6.0 nor greater than 9.0 standard units and shall be monitored once per month by grab sample.]

[(c) There shall be no discharge of floating solids or visible foam in other than trace amounts, and no discharge of visible oil.]

[(d) All discharges from ready-mixed concrete plants and/or concrete products plants or associated facilities shall comply with §319.22 of this title (relating to Quality Levels--Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels--Tidal Waters).]

§321.156. Sampling, Reporting, and Recordkeeping.]

[(a) Unless otherwise specified in this rule, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).]

[(b) Results of monitoring of each constituent specified in §321.155 of this title (relating to Specific Requirements for Discharge) shall be reported by the registrant to the executive director on the Ready-Mixed Concrete Plants and Concrete Products Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule.]

[Figure: 30 TAC §321.156(b)]

<u>Monitoring Period</u>	<u>Report Due</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

[(c) The registrant shall maintain results of monitoring of each constituent specified in §321.155 of this title (relating to Specific Requirements for Discharge) or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.]

[§321.157. Restrictions.]

[(a) This rule does not convey property rights or grant any exclusive privilege.]

[(b) Separate authorizations may be required by the executive director, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.]

[(c) Any discharge of wastewater at a site other than the registered site or the POTW site is prohibited. Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulations.]

[\$321.158. Enforcement and Revocation.]

[If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code and under Chapter 70 of this title (relating to Enforcement). The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an emergency order, or temporary order as provided by Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for the discharge of wastewater into or adjacent to water in the state.]

[\$321.159. Annual Waste Treatment Fee.]

[(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge waste to surface waters in the state from ready-mixed concrete plants or concrete products plants or associated facilities under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.]

[(b) The fee assessed annually shall be in accordance with the following fee rate schedule:]

[(1) for any active facility, the fee shall be \$500, as determined by either the information specified on the application for registration or on the Ready-Mixed Concrete Plants and Concrete Products Report forms submitted during the calendar year.]

[(2) for any inactive facility, the fee shall be \$250.]

[(3) any increased assessment above the amounts in paragraphs (1) or (2) of this subsection shall be in accordance with regulations adopted by the commission.]

[SUBCHAPTER K: CONCENTRATED ANIMAL FEEDING OPERATIONS]

[§§321.181 - 321.198]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

[§321.181. Waste and Wastewater Discharge and Air Emission Limitations.]

[(a) It is the policy of the Texas Natural Resource Conservation Commission that there shall be no discharge or disposal of waste and/or wastewater from animal feeding operations into or adjacent to

waters in the state, except in accordance with subsection (b) of this section or Subchapter B of this chapter (relating to Commercial Livestock and Poultry Production Operations) or §305.1 of this title (relating to Scope and Applicability). Waste and/or wastewater generated by a concentrated animal feeding operation under this subchapter shall be retained and utilized or disposed of in an appropriate and beneficial manner as provided by commission rules, orders, authorizations or permits.]

[(b) Wastewater pollutants in the overflow may be discharged to waters in the state whenever rainfall events, either chronic or catastrophic, cause an overflow of process wastewater from a facility designed, constructed and operated to contain process generated wastewaters plus the runoff (storm water) from a 25-year, 24-hour rainfall event for the location of the point source (facility authorized under this subchapter). There shall be no effluent limitations on discharges from retention structures constructed and maintained to contain the 25-year, 24-hour storm event if the discharge is the result of a rainfall event which exceeds the design capacity and the retention structure has been properly maintained. Retention structures shall contain process wastewaters plus the 25-year, 24-hour storm event in accordance with §321.192 of this title (relating to Pollution Prevention Plans).]

[(c) Facilities shall be operated in such a manner as to prevent the creation of a nuisance or a condition of air pollution as mandated by Chapters 341 and 382 of the Texas Health and Safety Code.]

[§321.182. Definitions.]

[The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Agronomic rates--The land application of animal wastes and/or wastewater at rates of application which provide the crop or forage growth with needed nutrients for optimum health and growth.]

[(2) Air contaminant--Particulate matter, radioactive material, dust, fumes, gas, mist, smoke, vapor, or odor or any combination thereof produced by processes other than natural. Water vapor is not an air contaminant.]

[(3) Animal feeding operation--A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or post harvest residues in the normal growing season. Two or more animal feeding operations under common ownership are a single animal feeding operation if they adjoin each other, or if they use a common area or system for the disposal of wastes.]

[(4) Animal unit--A unit of measurement for any animal feeding operation calculated by adding the following numbers: the number of slaughter and feeder cattle and dairy heifers multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55

pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses/mules multiplied by 2.0.]

[(5) Aquifer--A saturated permeable geologic unit that can transmit, store and yield to a well, the quality and quantities of ground water sufficient to provide for a beneficial use. An aquifer can be composed of unconsolidated sands and gravels, permeable sedimentary rocks such as sandstones and limestones, and/or heavily fractured volcanic and crystalline rocks. Ground water within an aquifer can be confined, unconfined or perched.]

[(6) Auction market--Any person engaged in the business of buying or selling livestock on a commission basis; or furnishing stockyard services for livestock producers, feeders, market agencies, and buyers. Stockyard services include pens or other enclosures and their appurtenances, in which live cattle, sheep, goats, swine, horses/mules are received, held, or kept for sale or shipment. For the purposes of this subchapter, the term auction market is synonymous with the terms sale ring, auction barn, livestock commission companies and livestock sale barn, as these terms are commonly used in the agriculture industry.]

[(7) Best Management Practices (BMPs)--The schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters in the state. Best Management Practices also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.]

[(8) Chronic or catastrophic rainfall event--For the purposes of these rules, these terms shall mean a series of rainfall events which would not provide opportunity for dewatering and which would be equivalent to or greater than the 25-year, 24-hour storm event or any single event which would be equivalent to or greater than the 25-year, 24-hour storm event. Catastrophic conditions could include tornados, hurricanes, or other catastrophic conditions which could cause overflow due to the high winds or mechanical damage.]

[(9) Commission--The Texas Natural Resource Conservation Commission.]

[(10) Concentrated animal feeding operation (CAFO)--Any animal feeding operation which the Executive Director designates as a significant contributor of pollution or any animal feeding operation defined as follows:]

[(A) Any new and existing operations which stable and confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in any of the following categories:]

[(i) 1,000 slaughter or feeder cattle;]

[(ii) 700 mature dairy cattle (whether milkers or dry cows);]

[(iii) 2,500 swine weighing over 55 pounds;]

[(iv) 500 horses;]

[(v) 10,000 sheep;]

[(vi) 55,000 turkeys;]

[(vii) 100,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;]

[(viii) 30,000 laying hens or broilers when facility has a liquid waste handling system;]

[(xi) 5,000 ducks; or]

[(x) 1,000 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.]

[(B) Any new and existing operations covered under this subchapter which discharge pollutants into waters in the state either through a man-made ditch, flushing system, or other similar man-made device, or directly into the waters in the state, and which stable or confine and feed or

maintain for a total of 45 days or more in any 12-month period more than the numbers or types of animals in the following categories:]

[(i) 300 slaughter or feeder cattle;]

[(ii) 200 mature dairy cattle (whether milkers or dry cows);]

[(iii) 750 swine weighing over 55 pounds;]

[(iv) 150 horses;]

[(v) 3,000 sheep;]

[(vi) 16,000 turkeys;]

[(vii) 30,000 laying hens or broilers when the facility has unlimited continuous flow watering systems;]

[(viii) 9,000 laying hens or broilers when facility has a liquid waste handling system;]

[(ix) 1,500 ducks; or]

[(x) 300 animal units from a combination of slaughter steers and heifers, mature dairy cattle, swine over 55 pounds and sheep.]

[(C) Provided, however, that no animal feeding operation is a concentrated animal feeding operation as defined above if such animal feeding operation discharges only in the event of a 25-year, 24-hour storm event. Poultry facilities that have no discharge to waters in the state normally are not considered a concentrated animal feeding operation. However, poultry facilities that use a liquid waste handling system or stockpile litter near watercourses or dispose of litter on land such that stormwater runoff or flooding can wash it into surface water or ground water may be considered a concentrated animal feeding operation. For the purposes of air quality, the term CAFO, as used in this subchapter, includes any associated feed handling and/or feed milling operations located on the same site as the CAFO.]

[(11) Control facility--Any system used for the retention of wastes on the premises until their ultimate disposal. This includes the collection and retention of manure, liquid waste, process wastewater and runoff from the feedlot area.]

[(12) Dairy Outreach Program Areas--The areas of the state involved in the Commission's Dairy Outreach Program as of the effective date of these rules. The areas include all of the following counties: Erath, Bosque, Hamilton, Comanche, Johnson, Hopkins, Wood and Rains.]

[(13) Edwards Aquifer--That portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis and Williamson counties. (See Chapter 313 of this title (relating to Edwards Aquifer).)]

[(14) Edwards Aquifer recharge zone--Generally, that area where the Edwards and associated limestones crop out in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis and Williamson counties and the outcrops of other formations in proximity to the Edwards limestone, where faulting and fracturing may allow recharge of the surface waters to the Edwards Aquifer, and the area in Uvalde County within 500 feet of the Nueces, Dry Frio, Frio, and Sabinal Rivers downstream from the northern Uvalde County line to the recharge zone as otherwise defined. The recharge zone is specifically that geological area delineated on official maps located in the offices of the commission and the Edwards Underground Water District. (See Chapter 313 of this title (relating to Edwards Aquifer).)]

[(15) Executive Director--The Executive Director of the commission or an employee of the commission acting in the behalf of and under the direction of the Executive Director.]

[(16) Flushwater waste handling system--A system in which fresh water or wastewater is recycled or used in transporting waste.]

[(17) Ground water--Subsurface water that occurs below the water table in soils and geologic formations that are saturated, and is other than underflow of a stream or an underground stream.]

[(18) Houses or housed lot--Totally roofed buildings with open or enclosed sides wherein livestock or poultry are housed on solid concrete or dirt floors, slotted (partially open) floors over pits or waste collection areas in pens, stalls or cages, with or without bedding materials and mechanical ventilation. For the purposes of this subchapter, the term housed lot is synonymous with the terms slotted floor building, barn, stable, or house, for livestock or poultry.]

[(19) Hydrologic connection--The interflow and exchange between control facilities or surface impoundments and waters in the state through an underground corridor or connection.]

[(20) Lagoon--An earthen structure for the biological treatment of liquid organic wastes. Lagoons can be aerobic, anaerobic, or facultative depending on their design and can be used in series to produce a higher quality effluent.]

[(21) Land application--The removal of wastewater and waste solids from a control facility and distribution to, or incorporation into the soil mantle primarily for beneficial reuse purposes.]

[(22) Liner--Any barrier in the form of a layer, membrane or blanket, naturally existing, constructed or installed to prevent a significant hydrologic connection between liquids contained in retention structures and waters in the state.]

[(23) Natural Resources Conservation Service (NRCS)--An agency of the U.S. Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).]

[(24) New concentrated animal feeding operation--A new concentrated animal feeding operation which is not authorized under Subchapter B of this chapter (relating to Commercial Livestock and Poultry Production Operations) as of the effective date of these rules.]

[(25) No discharge--The absence of flow of waste, process generated wastewater, contaminated rainfall runoff or other wastewater from the premises of the animal feeding operation, except for overflows which result from chronic or catastrophic rainfall.]

[(26) Nuisance--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 which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.]

[(27) Open lot--Pens or similar confinement areas with soil, concrete, or other paved or hard surfaces wherein animals or poultry are substantially or entirely exposed to the outside environment except for small portions of the total confinement area affording protection by windbreaks or small shed-type shade areas. For the purposes of this subchapter, the term open lot is synonymous with the terms dirt lot or dry lot, for livestock or poultry, as these terms are commonly used in the agricultural industry.]

[(28) Operator--The owner or one who is responsible for the management of a concentrated animal feeding operation or animal feeding operation subject to the provisions of this subchapter.]

[(29) Permanent Odor Sources--Those odor sources which may emit odors 24 hours per day. For the purposes of this subchapter, permanent odor sources include but are not limited to pens, confinement buildings, lagoons, retention facilities, manure stockpile areas and solid separators. For the purposes of this subchapter, permanent odor sources shall not include any feed handling facilities, land application equipment or land application areas.]

[(30) Permit-by-rule--An authorization by rule as provided by this subchapter in accordance with the Texas Water Code, §26.040.]

[(31) Permittee--Any person granted authorization under an individual permit or order, as well as by rule.]

[(32) Pesticide--A substance or mixture of substances intended to prevent, destroy, repel, or mitigate any pest, or any substance or mixture of substances intended for use as a plant regulator, defoliant, or desiccant.]

[(33) Process wastewater--Any process generated wastewater directly or indirectly used in the operation of a CAFO (such as spillage or overflow from animal or poultry watering systems which comes in contact with waste); washing, cleaning or flushing pens, barns, manure pits, direct contact swimming, washing, or spray cooling of animals; and dust control), and precipitation which comes into contact with any manure or litter, bedding, or any other raw material or intermediate or final material or product used in or resulting from the production of animals or poultry or direct products (e.g., milk, meat or eggs).]

[(34) Qualified ground water scientist--A scientist or engineer who has received a baccalaureate or post-graduate degree in natural sciences or engineering and has sufficient training and experience in ground water hydrology and related fields as may be demonstrated by state registration, professional certification, or completion of accredited university programs that enable that individual to make sound professional judgements regarding ground water monitoring, contamination fate and transport, and corrective action.]

[(35) Recharge zone/feature--Those natural features either on or beneath the ground surface, in any location specific to the site under evaluation where, due to surface and/or geologic features, a significant hydrologic connection exists between the ground surface and the underlying ground water within an aquifer. Examples include, but are not limited to: a permeable and porous soil material that directly overlies a weakly cemented or fractured limestone, sandstone, or similar type aquifer; and fractured or karstified limestone or similar type formation that crops out on the surface, especially near a water course.]

[(36) Retention facility or retention structure--All collection ditches, conduits and swales for the collection of runoff and wastewater, and all basins, ponds, pits, tanks and lagoons used to store wastes, wastewaters and manures.]

[(37) Technical merit--For the purpose of this subchapter, "technical merit" means evidence demonstrating that the application on its face does not meet all technical requirements of this subchapter and therefore the granting of an authorization under this subchapter may result in detrimental impacts to ground water underlying the related CAFO, detrimental impacts to surface water quality within one mile of the CAFO, or evidence demonstrating that history of compliance by the applicant has resulted in detrimental impacts to such ground water or surface water quality within these geographic limits.]

[(38) 25-year, 24-hour rainfall event/25-year rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed therefrom.]

[(39) Waste--Manure (feces and urine), litter, bedding, or feedwaste from animal feeding operations.]

[(40) Wastewater--Water containing waste or contaminated by waste contact, including process-generated and contaminated rainfall runoff.]

[(41) Waters in the state--Ground water, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.]

[\S321.183. Applicability.]

[(a) Any existing feedlot/concentrated animal feeding operation as defined and authorized under Subchapter B of this chapter (relating to Commercial Livestock and Poultry Production Operations) on the effective date of these rules shall continue to be regulated in accordance with Subchapter B of this chapter and subject to the terms and conditions of any permit issued under Subchapter B of this chapter. Any CAFO which has submitted an administratively complete permit application under Subchapter B of this chapter on the effective date of these rules shall be subject to the terms and conditions of Subchapter B of this chapter in the processing and/or issuance of any such permit and shall continue to be regulated under Subchapter B of this chapter following issuance of the permit. Any application for permit renewal, amendment or transfer for any permit issued under Subchapter B of this chapter shall be reviewed and/or issued under the provisions of Subchapter B of this chapter.]

[(b) In accordance with Texas Water Code, §26.040, any new concentrated animal feeding operation may be regulated by rule, rather than by individual permit, subject to subsections (b)-(l) of this section, provided such operations comply with §§321.191-321.197 of this title (relating to Proper CAFO Operation and Maintenance; Pollution Prevention Plans; Best Management Practices; Other Requirements; Monitoring and Reporting Requirements; Registration; and Dairy Outreach Program Areas). The provisions of this subsection are applicable to all new concentrated animal feeding operations, either housed or open lots, including beef cattle, dairy cattle or milk production areas; swine; sheep; goats; horses; chickens, including broilers, layers and/or breeders; turkeys, including breeders and/or feeders; any other animal species not specifically listed; and auction markets for which an authorization is required on or after the effective date of these rules.]

[(c) The Executive Director may require any animal feeding operation to comply with the requirements of this subchapter in order to achieve the policy and purposes enumerated in the Texas Water Code, §5.120 and §26.003; the Health and Safety Code, Chapters 341, 361 and 382; and §321.181 of this title (relating to Waste and Wastewater Discharge and Air Emission Limitations). The Executive Director may require the operator of any new concentrated animal feeding operation to apply for and obtain an authorization under this subchapter. Cases for which an authorization may be required include, but are not limited to, situations where:]

[(1) the operation is located near surface and/or ground water resources;]

[(2) compliance with standards in addition to those listed in this subchapter is necessary in order to protect fresh water from pollution; or]

[(3) the operation is not in compliance with the standards of this subchapter. A CAFO operator shall submit a complete application within 90 days of notification from the Executive Director that adherence to this subchapter is required.]

[(d) Any new or expanding concentrated animal feeding operation not authorized pursuant to subsection (a) of this section and which is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the numbers of animals specified in the definition of CAFO in §321.182(A) of this title (relating to Definitions) shall apply for and obtain authorization under this subchapter.]

[(e) Any new or expanding CAFO located in areas designated under §321.197 of this title (relating to Dairy Outreach Program Areas), and that is designed to stable or confine and feed or maintain for a total of 45 days or more in any 12-month period more than the number of animals specified in the definition of CAFO in §321.182(B) of this title (relating to Definitions) but less than or equal to the number of animals specified in the definition of CAFO in §321.182(B) shall either apply for and obtain authorization under this subchapter or comply with the provisions of §321.194(a)(1), (g), and (h) of this title (relating to Other Requirements) and the provisions of §§321.191-321.195 of this title.]

[(f) New concentrated animal feeding operations are prohibited on the Edwards Aquifer recharge zone.]

[(g) All concentrated animal feeding operations which are authorized under this subchapter must develop and implement a pollution prevention plan. Operators of an animal feeding operation not required to obtain authorization under this section must locate, construct and manage waste control facilities and air control facilities (where applicable) to protect the air, surface water and ground water in accordance with the requirements of this subchapter.]

[(h) Any new or expanding concentrated animal feeding operation, which is required to submit an application in accordance with this subchapter may not commence operation of any waste management facilities or any facility that has the potential to emit air contaminants without first receiving authorization in accordance with this subchapter. Any new or expanding CAFO located in the Dairy Outreach Program Areas as designated under §321.197 of this title (relating to Dairy Outreach Program Areas), having more than 300 animal units and which is not required to submit an application in accordance with this subchapter shall not commence operation of any waste management facilities or any facility that has the potential to emit air contaminants without first filing for registration in accordance with §321.196 of this title (relating to Registration) and securing the necessary approval from the Executive Director that such facilities have been constructed in accordance with provisions of this subchapter. The Executive Director shall conduct an on-site inspection after receipt of the request for approval and may issue a written approval or denial as soon as possible but not later than 21 days of the request seeking approval.]

[(i) Any CAFO which has existing authority under the Texas Clean Air Act does not have to meet the air quality criteria of this subchapter. Pursuant to the Texas Clean Air Act (TCAA), §382.051, any new CAFO which meets all of the requirements of this subchapter is hereby entitled to an air quality standard permit authorization under this subchapter in lieu of the requirement to obtain an air quality permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). Those CAFOs which would otherwise be required to obtain an air quality permit under Chapter 116 of this title, which cannot satisfy all of the requirements of this subchapter shall apply for and obtain an air quality permit pursuant to Chapter 116 of this title in addition to any authorization required under this subchapter. Those animal feeding operations which are not required to obtain authorization under this subchapter may be subject to requirements under Chapter 116 of this title. Any change in conditions such that a person is no longer eligible for authorization under this section requires authorization under Chapter 116 of this title. No person may concurrently hold an air quality permit issued under Chapter 116 of this title and an authorization with air quality provisions under this subchapter for the same site. Any application for a permit renewal, amendment or transfer for any permit issued under the Texas Clean Air Act shall be reviewed and/or issued under the provisions of Chapter 116 of this title.]

[(j) Any animal feeding operation authorized under this subchapter which is a new major source, or major modification as defined in Chapter 116 of this title shall obtain a permit under Chapter 116 of this title.]

[(k) Any facility operating under a certified water quality management plan from the Texas State Soil and Water Conservation Board or any facility which qualifies for and obtains such a plan, is not a CAFO for purposes of this subchapter and is not covered by the provisions of this subchapter, unless referred to the commission in accordance with the Texas Agriculture Code, §201.026.]

[(l) Upon written request to the Executive Director by the owner/operator, any facility authorized under Subchapter B of this chapter (relating to Commercial Livestock and Poultry Production Operations) shall be authorized under this subchapter without notice and hearing. Such new authorization under this subchapter shall not impose any additional conditions or other requirements unless there is substantial modification to the facility constituting a major amendment as defined by §305.62 of this title (relating to Amendment) or to address compliance problems with the facility or its operations in accordance with a commission order or amendment. Transfer of authorization under this subsection will require compliance with the appropriate provisions of §§321.191-321.197 of this title. Such transfer shall not require any changes to existing structural measures which are documented to meet design and construction standards in effect at the time of installation. Any owner/operator of a CAFO having less than or equal to 1,000 but more than 300 animal units, located in any area designated under §321.197 of this title (relating to Dairy Outreach Program Areas) and requesting coverage under this subsection are subject to provisions of subsection (e) of this section. A request for transfer that also proposes a major amendment shall be subject to notice and comment provisions of this section.]

[§321.184. Application Requirements.]

[(a) Any person whose concentrated animal feeding operation is required to file an application for an authorization under this subchapter, or who requests an amendment, modification or renewal of such authorization granted under this subchapter shall complete, sign and submit an application to the Executive Director, according to the provisions of this section.]

[(b) Applicants shall comply with the applicable provisions of §§305.43, 305.44, 305.46, and 305.47 of this title (relating to Who Applies; Signatories to Applications; Designation of Material as Confidential; and Retention of Application Data).]

[(c) Application for authorization under this subchapter shall be made on forms prescribed by the Executive Director. The applicant shall submit an original completed application with attachments and three copies to the Executive Director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate TNRCC regional office. The completed application shall be submitted to the Executive Director signed and notarized and with the following information:]

[(1) The verified legal status of the applicant.]

[(2) The payment of applicable fees.]

[(3) The signature of the applicant, in accordance with agency requirements.]

[(4) The maximum number of animals for which the facilities have been designed.]

[(5) A final site plan for the facility showing the boundaries of land owned, operated or controlled by the applicant and to be used as a part of a concentrated animal feeding operation, the locations of all pens, lots, ponds, disposal areas and any other types of control or retention facilities, and all adjacent landowners within 500 feet of the property line of all tracts containing facilities and all on-site or off-site waste disposal areas, including their name, address and telephone number. As used in this subchapter, the term "disposal area" does not apply to any lands not owned, operated or controlled by the concentrated animal feeding operation operator for the purpose of off-site land application of manure, wherein the manure is given or sold to others for beneficial use.]

[(6) A County General Highway Map (with graphic scale clearly shown) to identify the relative location of the concentrated animal feeding operation and at least a one mile area surrounding the facility.]

[(7) One original (remainder in copies) U.S. Geological Survey 7 1/2 minute quadrangle topographic map or an equivalent high quality copy showing the boundaries of land owned, operated or controlled by the applicant and to be used as a part of a concentrated animal feeding operation, and the location of all private water wells (abandoned or in use) within 150 feet and public wells within 500 feet of the outer boundary of retention facilities and all springs, lakes or ponds downstream of the facility within one mile of the outer boundary of the retention facilities.]

[(8) A copy of the pollution prevention plan for the concentrated animal feeding operation for which the application is filed. Prior to utilization of wastewater retention facilities, documentation of liner certifications by a professional engineer must be submitted (if applicable).]

[(9) A copy of a recorded deed or tax records showing ownership, or a copy of a contract or lease agreement between the applicant and the owner of any lands to be utilized under the proposed concentrated animal feeding operation. This requirement does not apply to any lands not owned, operated or controlled by the applicant for the purpose of off-site land application of manure wherein the manure is given or sold to others for beneficial use.]

[(10) A certification by a NRCS engineer, registered professional engineer or qualified ground water scientist that no recharge features exist on any tracts owned, operated or controlled by the applicant and utilized under the application.]

[(11) Where the applicant cannot document the absence of recharge features on the tracts for which an application is being filed, the final site plan shall also indicate the specific location of any and all recharge features on any property owned, operated or controlled by the applicant under the application as certified by a NRCS engineer, registered professional engineer or qualified ground water scientist. The applicant shall also submit a plan, developed by a NRCS engineer or registered professional engineer, to prevent impacts on the recharge zone/feature and associated ground water formation which may include the following:]

[(A) Installation of the necessary and appropriate protective measures such as impervious cover, berms or other equivalent protective measures covering all affected facilities and disposal areas; or]

[(B) Submission of a detailed ground water monitoring plan covering all affected facilities and disposal areas. At a minimum, the ground water monitoring plan shall specify procedures to annually collect a ground water sample from representative wells, have each sample analyzed for chlorides, nitrates and total dissolved solids and compare those values with background values for each well; or]

[(C) Any other similar method or approach demonstrated by the applicant to be protective of any associated recharge zone/feature.]

[(12) Area land use map (air quality only). This map should identify the property line, the permanent odor sources and the distance and direction to any residences, animal feeding operations, businesses or occupied structures within a one mile radius of the permanent odor sources. The map shall include the north arrow and scale of map.]

[(13) The applicant shall indicate in the application the location and times where the application may be inspected by the public. Within 48 hours of receiving notice of administrative and technical completeness, the applicant shall either make a copy of the application available for public inspection at the applicant's place of business during normal business hours, Monday through Friday, or

shall provide a copy of the application to a public place within the county where the proposed facility is to be located so that the copy may be made available for inspection at a public place during regular business hours. Such places may include, but are not limited to, public libraries; district, county, or municipal court offices; community recreation centers; or public schools.]

[(d) Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). An annual waste treatment inspection fee is also required of each permittee as required by §305.503 of this title (relating to Fee Assessment). No fees under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) shall be required of an applicant for a permit-by-rule issued under this subchapter.]

[(e) Each permittee shall comply with §§305.61 and 305.64-305.68 of this title (relating to Applicability, Transfer of Permits, Corrections of Permits, Revocation and Suspension, Revocation and Suspension upon Request or Consent, Action and Notice on Petition for Revocation or Suspension).]

[(f) Authorizations granted under this subchapter shall be effective for a term not to exceed five years, unless extended by order of the commission.]

[(g) Air quality buffer distance requirements for new concentrated animal feeding operations. At the time of initial application, any CAFO designed to confine livestock in numbers equal to or greater than 1,000 animal units, or confine poultry at numbers greater than 30,000 with a liquid waste handling system shall not locate any permanent odor sources within 0.25 miles of any occupied residence or

business structure, school, church, or public park without written consent and approval from the landowner. For the purposes of this subchapter, any measurement of a buffer distance shall be from the nearest edge of the permanent odor source to the nearest edge of an occupied structure or designated recreational area listed under this subsection.]

§321.185. Application Review.]

[(a) Applications for authorizations or major amendments to such authorizations under this subchapter shall be reviewed by the Executive Director for administrative and technical completeness within 15 working days of receipt of the application by the Executive Director. Upon determination that the application contains the information and attachments required under this subchapter, the Executive Director shall declare that the application is administratively and technically complete.]

[(b) Within five working days of declaration of administrative completeness, the Executive Director shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative and technical completeness which is suitable for publishing or mailing, under the requirements of §321.186(b) of this title (relating to Notice of Application), and shall forward that statement to the applicant.]

§321.186. Notice of Application.]

[(a) Notice of application. The notice of application and administrative/technical completeness shall contain the following information:]

[(1) the identifying number given the application by the commission;]

[(2) the type of authorization being sought under the application;]

[(3) the name and address of the applicant;]

[(4) the date on which the application was submitted;]

[(5) a brief summary of the information included in the application, including but not limited to the general location of facilities and disposal areas associated with the application, and the location where a copy of the application may be reviewed by interested persons;]

[(6) the format for submission of a comment in accordance with this subchapter to the Executive Director regarding the application; and]

[(7) the date, time and place where all comments are to be received by the Executive Director in relation to the numbered application, such comment period shall not be less than 30 days or more than 35 days from the actual date of publication.]

[(b) Publication.]

[(1) The applicant shall cause the notice of application and administrative/technical completeness approved by the Executive Director to be published once in a newspaper regularly published, and generally circulated within the county and area wherein the proposed facility is to be located, and within an adjoining county wherein any potential affected person may reside.]

[(2) The date of publication for notice of application and administrative/technical completeness shall not be later than the date set by the Executive Director.]

[(3) The applicant is responsible for the cost of publication. The applicant shall notify the Executive Director verbally or by facsimile within 24 hours of the first available working day after the publication of the notice, and shall provide the Executive Director a certified copy of the publication, within 20 calendar days of the date established by the Executive Director for publication. If the applicant does not provide the Executive Director with the appropriate publisher's affidavit within 20 days of the date established by the Executive Director, the Executive Director shall cease processing and return the application.]

[(c) Application returned. If an application is received which is not administratively/technically complete, the Executive Director shall notify the applicant of the deficiencies prior to expiration of the review period (15 working days) by certified mail return receipt requested. If the additional requested information is received within 30 days of receipt of the deficiency notice, the Executive Director will

evaluate the information within eight working days and, where applicable, shall prepare a statement of receipt of the application and declaration of administrative/technical completeness in accordance with subsection (a) of this section. If the requested information is not submitted by the applicant within 30 days of the date of receipt of the deficiency notice, the Executive Director shall return the incomplete application to the applicant.]

[(d) Notice by mail.]

[(1) The Executive Director will transmit the notice of application and administrative/technical completeness by first-class mail to persons listed in paragraph (2) of this subsection and to other persons who, in the judgment of the Executive Director, may be affected. The applicant is responsible for the cost of required notice. A record on file with the staff of the Executive Director which includes the list of persons to whom notice was mailed and the date of mailing, signed by a person with personal knowledge that the mailing occurred, shall create a presumption that notice was mailed in accordance with this section.]

[(2) The notice shall be mailed by the Executive Director to the following:]

[(A) the potentially affected landowners named on the final site plan submitted with the application;]

[(B) the mayor and health officials of the city or town in which the facility is or will be located or in which waste is or will be disposed of;]

[(C) the county judge and health authorities of the county in which the facility is located or in which waste is or will be disposed of;]

[(D) the Texas Department of Health;]

[(E) the Texas Parks and Wildlife Department;]

[(F) the applicant;]

[(G) persons who request to be put on the mailing list, including participants in past commission proceedings for the facility who have submitted a written request to be put on the mailing list;]

[(H) state and federal agencies for which notice is required in 40 Code of Federal Regulations §124.10(c); and]

[(I) for applications regarding operations located in an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas), notice shall be mailed to the river authority whose jurisdictional watershed includes that location; and]

[(3) The date of mailing for a notice of application and administrative/technical completeness shall be established by the Executive Director.]

[(4) The notice shall include instructions regarding the requirements contained in §321.187 of this title (relating to Public Comments) providing the manner and timeframe for the submission of comments to the proposed application.

[\§321.187. Public Comments.]

[(a) For comments to the application to be qualified and considered by the Executive Director, such comments must:]

[(1) be sworn and in writing;]

[(2) be received by the Executive Director not later than 30 days from the date of publication or actual receipt of the notice;]

[(3) describe in detail how the application, if approved, would affect a personal, property, or other legally justiciable interest of the commenter;]

[(4) describe in detail how the application technical merit, i.e., fails to meet the applicable requirements set forth in this subchapter and therefore issuance of the permit-by-rule may result in detrimental impacts to ground water underlying the related CAFO, detrimental impacts to surface water quality within one mile of the facility or evidence demonstrating that the history of compliance by the applicant has resulted in detrimental impacts to such ground or surface water quality within these geographic limits; and]

[(5) the specific action, e.g., special conditions, denial of application, etc., the commenter wishes the commission to take in response to the application.]

[(b) The Executive Director shall, within 21 days of the deadline by which comments must be received by the Executive Director, prepare and make available to all commenters, the applicant, and the public interest counsel a copy of, and the Executive Director's responses to, all comments to the proposed application or amended application which were timely filed with the Executive Director. Such notification shall include the Executive Director's determination of whether any comments did or did not demonstrate technical merit.]

[(c) Not later than the 20th day after the date of the Executive Director's letter notifying the applicant, commenter(s) and public interest counsel of the Executive Director's determination that a comment(s) has demonstrated technical merit, applicant shall either:]

[(1) file a request, in accordance with subsection (e) of this section, to have the commission review the Executive Director's determination that a comment has demonstrated technical merit;]

[(2) request the Executive Director to suspend processing of the application for a period of time not to exceed 30 days to enable the applicant to provide additional information in accordance with subsection (g) of this section;]

[(3) request the Executive Director to forward the application for a contested case hearing in accordance with applicable rules; or]

[(4) withdraw the application from consideration without prejudice and without reimbursement of fees.]

[(d) Not later than the 20th day after the date of the Executive Director's letter notifying the applicant, commenters and public interest counsel of the Executive Director's determination that no comments demonstrated technical merit, any qualified commenter may file with the chief clerk, general counsel and Executive Director a request to have the commission review the Executive Director's determination that the commenter's comments have not demonstrated technical merit.]

[(e) Any person requesting commission review of the Executive Director's determination of whether any comments did or did not demonstrate technical merit shall also provide copies of the request

to the applicant or commenters, whichever is applicable, as well as the public interest counsel, at the same time the request is filed with the chief clerk, general counsel and the Executive Director. The commission shall consider a request to review the Executive Director's determination of whether any comments did or did not demonstrate technical merit within 30 days of receipt by the chief clerk of the request for review. The applicant or commenter may not request more than one review each of an original or amended application by the commission under this subsection.]

[f) If the commission has affirmed the Executive Director's determination that a comment did demonstrate technical merit, then the applicant shall request, within 20 days after the date of issuance of the commission's written order, one of the actions specified under subsection (c)(2)-(4) of this section.]

[g) Any submission of additional information or other change to the application under subsection (c)(2) of this section cannot constitute a major amendment to the application as provided by §281.23 of this title (relating to Application Amendment). The Executive Director and chief clerk shall hold in abeyance all requests for commission review submitted in accordance with subsection (d) of this section. Not later than 14 days following the submission of an amended application under this subsection, the Executive Director shall provide a copy of the amended application to the commenters requesting review and the public interest counsel and shall notify the applicant, commenters and the public interest counsel of whether any of the original comments received still demonstrate technical merit. Not later than the 20th day after the date of the letter notifying the applicant, commenters requesting review and the public interest counsel, the commenters and applicant shall notify the Executive Director, chief clerk and general

counsel in writing of whether they wish to request commission review of the Executive Director's determination in reference to the amended application.]

[(h) The issuance of a permit-by-rule under this subsection can only occur if all technical merit issues have been resolved and there has been no substantial modification(s), which would constitute a major amendment to the application as provided by §281.23 of this title (relating to Application Amendment). The Executive Director shall issue a permit-by-rule in accordance with this subchapter within 14 days of the following, whichever is applicable, if:]

[(1) no timely comments demonstrating technical merit were received by the end of the comment period, as specified under subsection (a)(2) of this section;]

[(2) no requests for review by the commission were filed by commenters on the original application, in accordance with subsections (d) and (e) of this section;]

[(3) no commenter pursued a request for a review before the commission on the amended application, in accordance with subsection (g) of this section; or]

[(4) the issuance of a commission order affirming the Executive Director's determination that no comment demonstrated technical merit.]

[(i) In the event the applicant does not provide written response to the Executive Director in accordance with subsections (c) or (g) of this section, then the Executive Director may notify the applicant and person(s) commenting in writing that the application is denied or returned, or take other appropriate action as authorized by Chapter 305 of this title (relating to Consolidated Permits) and the provisions of this subchapter.]

[\$321.188. Permit Issuance.]

[(a) A permit-by-rule issued under this subchapter by the Executive Director shall contain the following:]

[(1) name and address of the permittee;]

[(2) the maximum number and type of animals authorized for confinement at the facility;]

[(3) the applicable water quality and/or air quality provisions of §§321.191-321.195 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements); and]

[(4) the applicable provisions of §305.125 of this title (relating to Standard Permit Conditions).]

[(b) A permit-by-rule issued by the commission after contested case hearing as provided by §321.187 of this title (relating to Public Comments) shall contain the elements listed under subsection (a) of this section and either any requirements or additional conditions determined appropriate as a result of an alternative dispute resolution process or any additional conditions or provisions the commission has determined appropriate in accordance with its findings of fact and conclusions of law.]

[\$321.189. Amendments.]

[(a) Any request for a change in term, condition or provision of a permit-by-rule issued under this subchapter or a modification of the final site plan will require the permittee to file an application in accordance with §321.184 of this title (relating to Application Requirements).]

[(b) Amendment initiated permit-by-rule expiration. The existing permit-by-rule will remain effective and will not expire until action on the application for amendment is final. The commission or Executive Director, in accordance with this subchapter, may extend the term of a permit-by-rule when taking action on an application for amendment.]

[(c) Amendment application considered a request for renewal. For applications filed in accordance with this subchapter, an application for an amendment to a permit-by-rule may also be considered as an application for renewal of the permit-by-rule if so requested by the applicant.]

[\$321.190. Renewal.]

[The permittee shall file an application for renewal of a permit-by-rule issued under this subchapter. Any permittee with an issued and effective permit-by-rule shall submit an application for renewal at least 180 days before the expiration date of the effective permit-by-rule, unless permission for a later date has been granted by the Executive Director. The Executive Director shall provide the permittee notice of deadline for application for renewal at least 240 days before the permit-by-rule expiration date. The Executive Director shall not grant permission for applications to be submitted later than the expiration date of the existing permit-by-rule.]

[(1) An application for a renewal of a permit-by-rule which does not propose any other change to the authorization and where there has been no related formal major enforcement action against the authorized facility during the last 36 months of the term of the permit-by-rule may be granted by the Executive Director without notice and public comment. As used in this subchapter, the term "major enforcement action" shall apply to those enforcement actions in which the Executive Director or the commission has determined that a violation which would contribute to pollution of surface water or ground water, or an unauthorized discharge has occurred; such discharge was within the reasonable control of the permittee; and such discharge could have been reasonably foreseen by the permittee. In addition to the above provisions, for any application for renewal of a permit-by-rule within an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas), an annual compliance inspection shall have been completed within the 12 months prior to the Executive Director processing the application.]

[(2) A fee of \$315 to be applied toward processing of the application.]

[(3) Upon receipt of the application, the Executive Director shall determine whether the application for renewal satisfies the criteria in paragraph (1) of this section within 15 working days. A permittee submitting an application for renewal satisfying the criteria in paragraph (1) of this section will automatically be issued a notice of renewal by the Executive Director in accordance with §321.188(a) of this title (relating to Permit Issuance).]

[(4) If the application for renewal cannot meet all of the criteria in paragraph (1) of this section, then an application for renewal shall be filed in accordance with §321.184 of this title (relating to Application Requirements).]

[(5) If an application for renewal requests a major amendment, as defined by §305.62 of this title (relating to Amendment), of the existing permit-by-rule, an application shall be filed in accordance with §321.184 of this title (relating to Application Requirements).]

[(6) If renewal procedures have been initiated before the permit-by-rule expiration date, the existing permit-by-rule will remain in full force and effect and will not expire until action on the application for renewal is final.]

[(7) The Executive Director may deny an application for renewal for the grounds set forth in §305.66 of this title (relating to Revocation and Suspension).]

[§321.191. Proper CAFO Operation and Maintenance.]

[The facilities covered under this subchapter are required to document all Best Management Practices (BMPs) used to comply with all applicable waste and wastewater discharge and air emission limitations in this subchapter. Such documentation shall be included in the Pollution Prevention Plan (PPP) outlined in this subchapter and shall be made available to the Executive Director upon request. Where applicable, equivalent and applicable measures contained in a site specific animal waste management plan prepared by the Natural Resources Conservation Service (NRCS), may be substituted for the BMPs and PPP requirements in this subchapter. Where provisions in the NRCS plan are substituted for applicable BMPs or portions of the PPP, the PPP must refer to the appropriate section of the NRCS plan. If the PPP contains reference to the NRCS Plan, a copy of the NRCS plan must be kept on site.]

[§321.192. Pollution Prevention Plans.]

[(a) A pollution prevention plan shall be developed for each facility covered under this subchapter. Pollution prevention plans shall be prepared in accordance with good engineering practices and should include measures necessary to limit the discharge of pollutants to waters in the state and nuisance and odor conditions. The plan shall describe and ensure the implementation of practices which are to be used to assure compliance with the limitations and conditions of this subchapter. The plan shall identify a specific individual(s) at the facility who is responsible for developing, implementation,

maintenance, and revision of the pollution prevention plan. The activities and responsibilities of the pollution prevention personnel should address all aspects of the facility's pollution prevention plan.]

[(b) Where a NRCS plan has been prepared for the facility, the pollution prevention plan may refer to the NRCS plan when the NRCS plan documentation contains equivalent requirements for the facility. When the permittee uses a NRCS plan as partial completion of the pollution plan, the NRCS plan must be kept on site. Design and construction criteria developed by the NRCS can be substituted for the documentation of design capacity and construction requirements (see subsection (f) of this section) of the pollution prevention plan provided the required inspection logs and water level logs in subsection (f)(3) and (11) of this section are kept with the NRCS Plan. Waste management plans developed by the NRCS can be substituted for the documentation of application rate calculations in subsection (f)(19) and (24) of this section. NRCS Waste Management Plans which have been prepared since January 1, 1989, are considered by the Natural Resources Conservation Service to contain adequate management practices. To insure the protection of water quality, the Natural Resources Conservation Service has determined that NRCS plans prepared prior to 1989 must be submitted for renewal with the Natural Resources Conservation Service or a waste management professional before December 1995. NRCS has determined that all plans should be reviewed every five years to insure proper management of wastes.]

[(c) The plan shall be signed by the owner or other signatory authority in accordance with §305.44 of this title (relating to Signatories to Applications), and be retained on site in accordance with §305.39(d) of this title (relating to Monitoring and Reporting Requirements). The plan shall be updated as appropriate.]

[(d) Upon completion of a plan review, the Executive Director may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this subchapter. After such notification from the Executive Director, the permittee shall make changes to the plan within 90 days after such notification unless otherwise provided by the Executive Director.]

[(e) The permittee shall amend the plan prior to any change in design, construction, operation, or maintenance, which has a significant effect on the potential for the discharge of pollutants to waters in the state or if the pollution prevention plan proves to be ineffective in achieving the general objectives of controlling pollutants in discharges or creating a nuisance condition from concentrated animal feeding operations.]

[(f) The plan shall include, at a minimum, the following items:]

[(1) Each plan shall provide a description of potential sources which may reasonably be expected to add pollutants to waters in the state or create a nuisance condition from the facility. Each plan shall identify activities and materials which may potentially be pollutant sources or create a nuisance. Each plan shall include:]

[(A) A site plan/map, or topographic map indicating, an outline of the drainage area of the concentrated animal feeding area; each existing structural control measure to reduce pollutants in wastewater and precipitation runoff; and surface water bodies.]

[(B) The plan shall identify the specific location of any recharge zones/features located on any tracts of land planned to be utilized under the provisions of this subchapter. In addition, the plan should also locate and describe the function of all measures installed to prevent impacts to identified recharge zones/features.]

[(C) A list of significant materials that are used, stored or disposed of at the concentrated animal feeding operation (such as pesticides, cleaning agents, fuels etc.). And a list of any significant spills of these materials at the facility after the effective date of these rules, or for new facilities, since date of operation.]

[(D) All existing sampling data.]

[(2) The pollution prevention plan for each facility shall include a description of management controls appropriate for the facility, and the permittee must implement such controls. The appropriateness and priorities of any controls shall reflect the identified sources of pollutants or nuisance at the facility.]

[(3) The plan shall include the location and a description of existing structural and nonstructural controls. Structural controls shall be inspected at least four times per year for structural integrity and maintenance. The plan shall include dates for inspection of the retention facility, and a log of the findings of such inspections.]

[(4) The plan must include documentation of the assumptions and calculations used in determining the appropriate volume capacity of the retention facilities. In addition to the 25-year, 24-hour rainfall, the volume capacity of the retention facility shall be designed to meet the demands of a hydrologic needs analysis (water balance) which demonstrates the irrigation water requirements for the cropping system maintained on the wastewater application site(s). Precipitation inputs to the hydrologic needs analysis (water balance) shall be the average monthly precipitation taken from an official source such as the "Climatic Atlas of Texas," LP-192, published by the Texas Department of Water Resources, dated December 1983, or the most recent edition, or successor publication. The consumptive use requirements of the cropping system shall be developed on a monthly basis, and shall be calculated as a part of the hydrologic needs analysis (water balance). The following volumes shall be considered in determining the analysis:]

[(A) the runoff volume from all open lot surfaces;]

[(B) the runoff volume from all areas between open lot surfaces that is directed into the retention facilities;]

[(C) the rainfall multiplied by the area of the retention and waste basin;]

[(D) the volume of rainfall from any roofed area that is directed into the retention facilities;]

[(E) all waste and process generated wastewater produced during a 21-day, or greater, period;]

[(F) the estimated storage volume for a minimum one year of sludge accumulation;]

[(G) the storage volume required to contain all wastewater and runoff during periods of low crop demand;]

[(H) the evaporation volume from retention facility surfaces;]

[(I) the volume applied to crops in response to crop demand;]

[(J) the minimum treatment volume required for waste treatment, if treatment lagoon; and/or]

[(K) any additional storage volume required as a safety measure as determined by the system designer.]

[(5) The maximum required storage value calculated by the hydrologic analysis requirements should not encroach on the storage volume required for the 25-year, 24-hour rainfall event.

Wastewater application rates utilized in the hydrologic needs analysis (water balance) should not induce runoff or create tailwater.]

[(6) In addition, the retention facility should include a top freeboard of two feet and in no case less than one foot.]

[(7) A lagoon in a single lagoon system and a primary lagoon in a multi-stage lagoon system shall be designed to maintain the necessary treatment volume or surface area as calculated using the manure production data (mean plus one standard deviation) published by American Society of Agricultural Engineers (ASAE) standards D384.1, dated June 1988, and applicable updates to comply with anaerobic lagoon design criteria as established by ASAE standards EP-403.2, dated December 1992, and applicable updates, or other site-specific data documented in the PPP.]

[(8) Evaporation systems shall be designed to withstand a ten-year (consecutive) period of maximum recorded monthly rainfall (other than catastrophic), as determined by a hydrologic needs analysis (water balance), and sufficient freeboard (not less than one foot) shall be maintained to dispose of rainfall and rainfall runoff from the 25-year, 24-hour rainfall event without overflow. In the hydrologic needs analysis determination, any month in which a catastrophic event occurs the analysis shall replace such an event with not less than the long term average rainfall for that month.]

[(9) Where appropriate, site specific information should be used to determine retention capacity and land application rates. All site specific information used must be documented in the pollution prevention plan.]

[(10) The plan shall include a description of the design standards for the retention facility embankments. The following minimum design standards are required for construction and/or modification of a retention facility:]

[(A) Soils used in the embankment shall be free of foreign material such as trash, brush, and fallen trees;]

[(B) The embankment shall be constructed in lifts or layers no more than six inches thick and compacted at optimum moisture content;]

[(C) Site specific variation in embankment construction must be accompanied by compaction testing, certification by a professional engineer, or certified to be in accordance with NRCS design standards. Compaction tests must be certified by a professional engineer; and]

[(D) All embankment walls shall be stabilized to prevent erosion or deterioration.]

[(11) The plan must include a schedule for liquid waste removal. A date log indicating weekly inspection of wastewater level in the retention facility, including specific measurement of wastewater level will be kept with the plan. Retention facilities shall be equipped with either irrigation or evaporation or liquid removal systems capable of dewatering the retention facilities. Operators using pits, ponds, tanks or lagoons for storage and treatment of storm water, manure and process generated wastewater, including flush water waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The operator shall restore freeboard for a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces such freeboard, weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater shall be available whenever needed to restore the freeboard required to accommodate the rainfall and runoff resulting from the 25-year, 24-hour rainfall event.]

[(12) A permanent marker (measuring device) shall be maintained in the wastewater retention facilities to show the following: the volume required for a 25-year, 24-hour rainfall event; and the predetermined minimum treatment volume within any treatment pond. The marker shall be visible from the top of the levee. At no time shall a treatment lagoon at a CAFO that is operated under an air quality authorization be dewatered to a level below the predetermined treatment volume, except for cleanout periods or periods where the net effect of evaporation and rainfall render it impractical to maintain the treatment volume without pumping fresh ground water from an aquifer.]

[(13) The primary lagoon in a multi-stage lagoon system shall be designed and operated so that the lagoon maintains a constant level at all times unless prohibited by climatic conditions. Where practical, any contaminated runoff should be routed around the primary lagoon into the secondary lagoon.]

[(14) A rain gauge shall be kept on site and properly maintained. A log of all measurable rainfall events shall be kept with the pollution prevention plan.]

[(15) Concentrated animal feeding operations constructing a new or modifying an existing wastewater retention facility shall insure that all construction and design is in accordance with good engineering practices. Where site specific variations are warranted, the permittee must document these variations and their appropriateness to the plan. Existing facilities which have been properly maintained and show no signs of structural breakage or leakage will be considered to be properly constructed. Structures built in accordance with site specific Natural Resources Conservation Service plans and specifications will be considered to be in compliance with the design and capacity requirements of this subchapter if the site specific conditions are the same as those used by the NRCS to develop the plan (numbers of animals, runoff area, wastes generated, etc.). All retention structure design and construction shall, at a minimum, be in accordance with the technical standards developed by the NRCS. The permittee must use those standards that are current at the time of construction.]

[(16) The permittee shall include in the plan, site specific documentation that no significant hydrologic connection exists between the contained wastewater and waters in the state. Where

the permittee cannot document that no significant hydrologic connection exists, the ponds, lagoons and basins of the retention facilities must have a liner which will prevent the potential contamination of surface waters and ground waters.]

[(A) The permittee can document lack of hydrologic connection by either: documenting that there will be no significant leakage from the retention structure; or documenting that any leakage from the retention structure would not migrate to waters in the state. This documentation shall be certified by a NRCS engineer, professional engineer or qualified groundwater scientist and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.]

[(B) For documentation of no significant leakage, in-situ materials must, at a minimum, meet the minimum criteria for hydraulic conductivity and thickness described below. Documentation that leakage will not migrate to waters in the state must include maps showing ground water flow paths, or that the leakage enters a confined environment. A written determination by a NRCS engineer, or a professional engineer that a liner is not needed to prevent leakage of significant amounts of pollutants into waters in the state will be considered documentation that no significant hydrologic connection exists.]

[(17) Site-specific conditions shall be considered in the design and construction of liners. NRCS liner requirements or liners constructed and maintained in accordance with NRCS design specifications in Technical Note 716 (or its current equivalent) shall be considered to prevent hydrologic

connections which could result in the contamination of waters in the state. Liners for retention structures should be constructed in accordance with good engineering practices. Where no site specific assessment has been done by a NRCS engineer, professional engineer, or qualified groundwater scientist the liner shall be constructed to have hydraulic conductivities no greater than 1×10^{-7} cm/sec, with a thickness of 1.5 feet or greater or its equivalency in other materials.]

[(18) Where a liner is installed to prevent hydrologic connection the permittee must maintain the liner to inhibit infiltration of wastewaters. Liners shall be protected from animals by fences or other protective devices. No trees shall be allowed to grow within the potential distance of the root zone. Any mechanical or structural damage to the liner will be evaluated by a NRCS engineer or a professional engineer within 30 days of the damage. Documentation of liner maintenance shall be kept with the pollution prevention plan. The permittee shall have a NRCS engineer, professional engineer, or qualified groundwater scientist review the documentation and do a site evaluation every five years. If notified by the Executive Director that significant potential exists for the contamination of waters in the state or drinking water, 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 pollution prevention plan, as well as all sampling data. In the event monitoring well(s) are required, the permittee must sample each monitor well annually for nitrate as nitrogen, chloride, and total dissolved solids using the methods outlined in the PPP, and compare the analytical results to the baseline data. If a 10% deviation in concentration of any of the sampled constituents is found, the permittee must notify the Executive Director within 30 days of receiving the analytical results. Data from any monitoring wells

must be kept on site for three years with the pollution prevention plan. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility.]

[(19) Retention facilities shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities, or a regular schedule of wastewater removal by contract hauler. The pollution prevention plan must include all calculations, as well as all factors used in determining land application rates, acreage, and crops. Land application rates must take into account the nutrient contribution of any land applied manures. If land application is utilized for disposal of wastewater, the following requirements shall apply.]

[(A) The discharge or drainage of irrigated wastewater is prohibited where it will result in a discharge to waters in the state.]

[(B) When irrigation disposal of wastewater is used, application rates shall not exceed the nutrient uptake of the crop coverage or planned crop planting with any land application of wastewater and/or manure. Land application rates of wastewaters should be based on the available nitrogen content; however, where local water quality is threatened by phosphorus, the permittee shall limit the application rate to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.]

[(C) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events (unless in accordance with subparagraph (E) of this paragraph).]

[(D) Irrigation practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site, contamination of waters in the state, and the occurrence of nuisance conditions.]

[(E) It shall be considered "Proper Operation and Maintenance" for a facility which has been properly operated, and that is in danger of imminent overflow due to chronic or catastrophic rainfall, to discharge wastewaters to land application sites for filtering prior to discharging to waters in the state. Only that portion of the total retention facility wastewater volume necessary to prevent overflow due to chronic or catastrophic rainfall shall be land applied for filtering prior to discharging to waters in the state. Monitoring and reporting requirements for such discharges shall be consistent with §321.195 of this title (relating to Monitoring and Reporting Requirements).]

[(F) Facilities including ponds, pipes, ditches, pumps, diversion and irrigation equipment shall be maintained to insure ability to fully comply with the terms of this subchapter and the pollution prevention plan.]

[(G) Adequate equipment or land application area shall be available for removal of such waste and wastewater as required to maintain the retention capacity of the facility for compliance with this subchapter.]

[(H) Where land application sites are isolated from surface waters and ground waters and no potential exists for runoff to reach any waters in the state, application rates may exceed nutrient crop uptake rates only upon written approval of the Executive Director. No land application under this subsection shall cause or contribute to a violation of water quality standards or create a nuisance.]

[(20) Solids shall be removed in accordance with a predetermined schedule for cleanout of all treatment lagoons to prevent the accumulation of solids from exceeding 50% of the original treatment volume. Removal of solids shall be conducted during favorable wind conditions that carry odors away from nearby receptors and the operator shall notify the regional office of the commission as soon as the lagoon cleaning is scheduled, but not less than ten days prior to cleaning, and verification shall be reported to the same regional office within five days after the cleaning has been completed. At no time shall emissions from any activity create a nuisance. Any increase in odors associated with a properly managed cleanout under this subsection will be taken into consideration by the Executive Director when determining compliance with the provisions of this subchapter.]

[(21) Manure and Pond Solids Handling and Land Application. Storage and land application of manure shall not cause a discharge of significant pollutants to waters in the state, cause a water quality violation in waters in the state or cause a nuisance condition. At all times, sufficient volume shall be maintained within the control facility to accommodate manure, other solids, wastewaters and rain waters (runoff) from the concentrated animal feeding areas.]

[(22) Where the permittee decides to land apply manures and pond solids the plan shall include: a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and any nutrient analysis data. Land application rates of wastes should be based on the available nitrogen content of the solid waste. However, where local water quality is threatened by phosphorus, the application rate shall be limited to the recommended rates of available phosphorus for needed crop uptake and provide controls for runoff and erosion as appropriate for site conditions.]

[(23) If the waste (manure) is sold or given to other persons for disposal, the permittee must maintain a log of: date of removal from the CAFO; name of hauler; and amount, in wet tons, dry tons or cubic yards, of waste removed from the CAFO. (Incidental amounts, given away by the pickup truck load, need not be recorded.) Where the wastes are to be land applied by the hauler, the permittee must make available to the hauler any nutrient sample analysis from that year.]

[(24) The procedures documented in the pollution prevention plan must ensure that the handling and disposal of wastes as defined in §321.182 of this title (relating to Definitions) comply with the following requirements.]

[(A) Adequate manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface disposal of manure in the 100-year flood plain, near water courses or recharge zone/feature is prohibited unless protected by adequate berms or

other structures. The land application of wastes at agricultural rates shall not be considered surface disposal in this case and is not prohibited.]

[(B) When manure is stockpiled, it shall 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. Runoff from manure storage piles must be retained on site.]

[(C) Waste shall not be applied to land when the ground is frozen or saturated or during rainfall events.]

[(D) Waste manure shall be applied to suitable land at appropriate times and rates. Discharge (run-off) of waste from the application site is prohibited. Timing and rate of applications shall be in response to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions.]

[(E) All necessary practices to minimize waste manure transport to waters in the state shall be utilized and documented to the plan.]

[(F) Edge-of-field, grassed strips shall be used to separate water courses from runoff carrying eroded soil and manure particles. Land subject to excessive erosion shall be avoided.]

[(G) Where land application sites are isolated from surface waters and no potential exists for runoff to reach waters in the state, application rates may exceed nutrient crop uptake rates only upon written approval by the Executive Director. No land application under this subchapter shall cause or contribute to a violation of surface water quality standards, contaminate ground water or create a nuisance condition.]

[(H) Nighttime application of liquid and/or solid waste shall only be allowed in areas with no occupied residence(s) within 0.25 mile from the outer boundary of the actual area receiving waste application. In areas with an occupied residence within 0.25 mile from the outer boundary of the actual area receiving waste application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current occupants of such residences have in writing agreed to such nighttime applications.]

[(I) Accumulations of solids on concrete cow lanes at dairies and concrete swine pens, without slotted floors, shall be scraped or flushed at least once per week or in accordance with proper design and maintenance of the facility. Farrowing pens at swine facilities which are not scraped or flushed once per week shall be scraped/flushed after each group of sows have been removed from the facility.]

[(J) Buildings designed with mechanical flush/scrape systems shall be flushed/scraped at least once per week or as often as necessary to maintain the design efficiency. This provision would include, but would not be limited to swine and caged poultry operations.]

[(K) Earthen pens shall be designed and maintained to ensure good drainage and to prevent ponding.]

[(L) Facilities that utilize a solid settling basin(s) shall remove solids from the basin as often as necessary to maintain the design efficiency.]

[(25) The plan shall include an appropriate schedule for preventative maintenance. Operators will provide routine maintenance to their control facilities in accordance with a schedule and plan of operation to ensure compliance with this subchapter. The permittee shall keep a maintenance log documenting that preventative maintenance was done. A preventive maintenance program shall involve inspection and maintenance of all runoff management devices (mechanical separators, catch basins) as well as inspecting and testing facility equipment and containment structures to uncover conditions that could cause breakdowns or failures resulting in discharge of pollutants to waters in the state or the creation of a nuisance condition.]

[(26) The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion. Where these areas have the potential to contribute pollutants to waters in the state the pollution prevention plan shall identify measures used to limit erosion and pollutant runoff.]

[(27) The permittee shall document to the pollution prevention plan as soon as possible any planned physical alterations or additions to the permitted facility. The permittee must insure that any change or facility expansion will not result in a discharge in violation of the provisions of this subchapter or will require an amendment to an existing permit-by-rule in force at the time of modification.]

[(28) Prior to commencing wastewater irrigation and/or waste application on land owned or operated by the permittee, and annually thereafter, the permittee shall collect and analyze representative soil samples of the wastewater and waste application sites according to the following procedures.]

[(A) Sampling procedures shall employ accepted techniques of soil science for obtaining representative and analytical results.]

[(B) Samples should be taken within the same 45-day time-frame each year.]

[(C) Obtain one composite sample for each soil depth zone per land management unit and per uniform (soils with the same characteristics and texture) soil type within the land management unit. For the purposes of this subchapter, a land management unit shall be considered to be an area associated with a single center pivot system or a tract of land on which similar soil characteristics exist and management practices are being used.]

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

[(i) Zone 1: 0-6 inches;]

[(ii) Zone 2: 6-24 inches.]

[(E) Soil samples shall be submitted to a soil testing laboratory along with a previous crop history of the site, intended crop use and yield goal. Soil reports should include nutrient recommendations for the crop yield goal.]

[(F) Chemical/nutrient parameters and analytical procedures for laboratory analysis of soil samples from wastewater and waste application sites shall include the following:]

[(i) Nitrate reported as nitrogen in parts per million (ppm);]

[(ii) Phosphorus (extractable, ppm)--Texas Agricultural Extension Service Soil Testing Laboratory--TAMU extractant, P1 Weak Bray, or Mehlich III extraction;]

[(iii) Potassium (extractable, ppm);]

[(iv) Sodium (extractable, ppm);]

[(v) Magnesium (extractable, ppm);]

[(vi) Calcium (extractable, ppm);]

[(vii) Soluble salts/electrical conductivity (dS/m)--Determined from
extract of 2:1 (v/v) water/soil mixture;]

[(viii) Soil water pH.]

[(G) When results of the annual soil analysis for extractable phosphorus in subparagraph (F) of this paragraph indicate a level greater than 200 ppm of extractable phosphorus (reported as P) in the 0-6 inch depth (Zone 1) for a particular waste and/or wastewater disposal field, then the permittee shall limit waste and/or wastewater application on that site to the recommended P rates based on crop uptake. Waste and/or wastewater application shall remain limited to recommended P rates until soil analysis indicates extractable phosphorus levels have been reduced below 200 ppm P.]

[(29) The permittee shall annually analyze at least one representative sample of irrigation wastewater and one representative sample of solid waste for total nitrogen, total phosphorus and total potassium.]

[(30) Results of initial and annual soils, wastewater and solid waste analyses shall be maintained on-site as part of the pollution prevention plan.]

[(31) Permittees submitting applications for renewal or expansion of existing facilities authorized under this subchapter to utilize a playa lake as a wastewater retention structure shall within 90 days of the effective date of the renewal, submit a ground water monitoring plan to the Agriculture Permitting and Enforcement Section, Agriculture and Rural Assistance Division of the Texas Natural Resource Conservation Commission. At a minimum, the ground water monitoring plan shall specify procedures to annually collect a ground water sample from each well providing water for the facility, have each sample analyzed for chlorides and nitrates and compare those values to background values for each well.]

[\§321.193. Best Management Practices.]

[The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding operations owners/operators, as appropriate, based upon existing physical and economic conditions, opportunities and constraints. Where the provisions in a NRCS plan are equivalent or more protective the permittee may refer to the NRCS plan as documentation of compliance with the BMPs required by this subchapter.]

[(1) Control facilities must be designed, constructed, and operated to contain all process generated wastewaters and the contaminated runoff from a 25-year, 24-hour rainfall event for the location

of the point source. Calculations may also include allowances for surface retention, infiltration, and other site specific factors. Waste control facilities must be constructed, maintained and managed so as to retain all contaminated rainfall runoff from open lots and associated areas, process generated wastewater, and all other wastes which will enter or be stored in the retention structure.]

[(2) Facilities shall not expand operations, either in size or numbers of animals, prior to amending or enlarging the waste handling procedures and structures to accommodate any additional wastes that will be generated by the expanded operations.]

[(3) Open lots and associated wastes shall be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures designed to carry peak flows expected at times when the 25-year, 24-hour rainfall event occurs.]

[(4) New or expanding facilities shall not be built in any stream, river, lake, wetland, or playa lake (except as defined by and in accordance with the Texas Water Code, §26.048).]

[(5) No waters in the state shall come into direct contact with the animals confined on the concentrated animal feeding operation. Fences and other methods may be used to restrict such access.]

[(6) Wastewater retention facilities or holding pens may not be located in the 100-year flood plain unless the facility is protected from inundation and damage that may occur during that flood event.]

[(7) There shall be no water quality impairment to public and neighboring private drinking water wells due to waste handling at the permitted facility. Facility wastewater retention facilities, holding pens or waste/wastewater disposal sites shall not be located closer than 500 feet of a public water supply well or 150 of a private water well, except in accordance with Chapter 338 of this title (relating to Water Well Drillers).]

[(8) Waste handling, treatment, and management shall not create a nuisance condition or an environmental or a public health hazard; shall not result in the contamination of drinking water; shall conform with state guidelines and/or regulations for the protection of surface and ground water quality.]

[(9) Solids, sludges, manure, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner such as to prevent significant pollutants from being discharged into waters in the state or creation of a nuisance condition.]

[(10) The operator shall prevent the discharge of pesticide contaminated waters into waters in the state. All wastes from dipping vats, pest and parasite control units, and other facilities utilized for the application of potentially hazardous or toxic chemicals shall be handled and disposed of in a manner such as to prevent any significant pollutants from entering the waters in the state or create a nuisance condition.]

[(11) Dead animals shall be properly disposed of within three days unless otherwise provided for by the Executive Director. Animals shall be disposed of in a manner to prevent contamination of waters in the state or create a nuisance or public health hazard.]

[(12) Collection, storage, and disposal of liquid and solid waste should be managed in accordance with recognized practices of good agricultural management. The economic benefits derived from agricultural operations carried out at the land disposal site shall be secondary to the proper disposal of waste and wastewater.]

[(13) Appropriate measures necessary to prevent spills and to clean up spills of any toxic pollutant shall be taken. Where potential spills can occur materials, handling procedures and storage shall be specified. Procedures for cleaning up spills shall be identified and the necessary equipment to implement a cleanup shall be available to personnel.]

[\§321.194. Other Requirements.]

[(a) Education and Training.]

[(1) Any CAFO owner/operator with greater than 300 animal units but less than or equal to 1,000 animal units and located within an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas) shall either file an application and obtain authorization under this subchapter or, within 12 months of coming under the provisions of §321.183(b) or (l) of this title (relating to

Applicability), the owner/operator or his designee with operational responsibilities shall complete an eight hour course or its equivalent on animal waste management. In addition, that owner/operator shall also complete at least eight additional hours of continuing animal waste management education for each two-year period after the first 12 months. The minimum criteria for the initial eight hours and the subsequent eight hours of continuing animal waste management education shall be developed by the Executive Director and the Texas Agricultural Extension Service. Verification of the date and time(s) of attendance and completion of required training shall be documented to the pollution prevention plan.]

[(2) Where the employees are responsible for work activities which relate to compliance with provisions of this subchapter, those employees must be regularly trained or informed of any information pertinent to the proper operation and maintenance of the facility and waste disposal. Employee training shall inform personnel at all levels of responsibility of the general components and goals of the pollution prevention plan. Training shall include topics as appropriate such as land application of wastes, proper operation and maintenance of the facility, good housekeeping and material management practices, necessary recordkeeping requirements, and spill response and cleanup. The permittee is responsible for determining the appropriate training frequency for different levels of personnel and the pollution prevention plan shall identify periodic dates for such training.]

[(b) Inspections and Recordkeeping. The operator or the person named in the pollution prevention plan as the individual responsible for drafting and implementing the plan shall be responsible for inspections and recordkeeping.]

[(c) Recordkeeping and Internal Reporting Procedures. Incidents such as spills, other discharges or nuisance conditions, along with other information describing the pollution potential and quality of the discharge shall be included in the records. Inspections and maintenance activities shall be documented and recorded. These records must be kept on-site for a minimum of three years.]

[(d) Visual Inspections. The authorized person shall inspect designated equipment and facility areas. Material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system or the creation of a nuisance. A follow-up procedure shall be used to ensure that appropriate action has been taken in response to the inspection.]

[(e) Site Inspection. A complete inspection of the facility shall be done and a report documenting the findings of the inspection made at least once/year. The inspection shall be conducted by the authorized person named in the pollution prevention plan, to verify that the description of potential pollutant sources is accurate; the drainage map has been updated or otherwise modified to reflect current conditions; and the controls outlined in the pollution prevention plan to reduce pollutants and avoid nuisance conditions are being implemented and are adequate. Records documenting significant observations made during the site inspection shall be retained as part of the pollution prevention plan. Records of inspections shall be maintained for a period of three years.]

[(f) Additional Requirements. No condition of this authorization shall release the permittee from any responsibility or requirements under other statutes or regulations, federal, state or local.]

[(g) Audits. Any CAFO owner/operator with greater than 300 animal units but less than or equal to 1,000 animal units and located within an area designated under §321.197 of this title (relating to Dairy Outreach Program Areas) shall either file an application and obtain authorization under this subchapter or have an independent third party conduct a detailed audit of the owner's/operator's facility at least once every five years beginning with the date the facility initially came under the provisions of this subchapter. The minimum criteria of the audit shall be developed by the Executive Director and the Texas Agricultural Extension Service. Any CAFO owner/operator having an audit conducted in accordance with this section shall notify the Executive Director of the initial date of an audit inspection. Such notification shall be made to the Executive Director not less than five calendar days after the date of initial inspection. The final audit inspection shall be completed within ten days of the initial date, unless an extension is agreed to in writing by the Executive Director.]

[(h) Protection from Liability to the State. Any CAFO owner/operator who conducts the audit identified in subsection (g) of this section, in accordance with the following requirements, shall not be liable to the state for violations identified during a subsequent inspection by the state, if the management circumstances which form the basis for the violation are identified as problems in the audit and are the subject of an ongoing workplan, agreed to by the Executive Director, to correct the problem. An audit report and detailed workplan must be provided to the Executive Director for agreement within 90 days of the final day of the audit inspection and shall provide the following information:]

[(1) Identify all problems which could contribute to a detrimental impact on air, surface or ground water quality;]

[(2) Provide a workplan which specifically lists action to be taken to assure that the problems identified are solved so that these circumstances can no longer contribute to detrimental impacts on air, surface or ground water quality; and]

[(3) Provide a detailed schedule showing the initiation and completion date for each item on the list of actions to be taken. Within 30 days of actual receipt of an audit report and workplan, the Executive Director shall inform the owner/operator submitting the audit report and workplan that the Executive Director agrees that the workplan submitted solves the problems identified in the audit report within a reasonable period of time or the Executive Director shall inform the owner/operator that it does not. If the Executive Director does not agree that the workplan will solve the problems identified within a reasonable period of time, the Executive Director shall inform the owner/operator specifically what changes must be made to the workplan in order to obtain such agreement. The Executive Director shall presume agreement with the owner/operator on the needed changes unless the owner/operator notifies the Executive Director in writing. Unless agreement can be reached between the Executive Director and the owner/operator within 30 days of the date the Executive Director notifies the owner/operator of disagreement, then protection pursuant to this subsection shall not apply. Upon agreement between the Executive Director and the owner/operator on the workplan, the owner/operator shall have a protection from liability from the state for any violation identified in an inspection by the state subsequent to the initial audit inspection date to the completion date of the items in the workplan which specifically address the cause of the violations.]

[\S321.195. Monitoring and Reporting Requirements.]

[(a) If, for any reason, there is a discharge to waters in the state, the permittee is required to notify the Executive Director orally within 24 hours and in writing within 14 working days of the discharge from the retention facility or any component of the waste handling or disposal system. In addition, the permittee shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:]

[(1) A description and cause of the discharge, including a description of the flow path to the receiving waterbody. Also, an estimation of the flow and volume discharged.]

[(2) 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.]

[(3) If caused by a precipitation event(s), information from the on-site rain gauge concerning the size of the precipitation event.]

[(4) Unless otherwise directed by the Executive Director, facilities authorized under this subchapter shall sample and analyze all discharges from retention facilities. Sample analysis shall be documented to the pollution prevention plan.]

[(5) Samples shall consist of grab samples taken from the overflow or discharges from the retention structure. A minimum of one sample shall be taken from the initial discharge (within 30 minutes). The sample shall be taken and analyzed in accordance with EPA approved methods for water analysis listed in 40 Code of Federal Regulations, 136. Measurements taken for the purpose of monitoring shall be representative of the monitored discharge.]

[(6) Sample analysis of the discharge must, at a minimum, include the following: Fecal Coliform bacteria; five-day Biochemical Oxygen Demand (BOD₅); Total Suspended Solids (TSS); ammonia nitrogen; and any pesticide which the operator has reason to believe could be in the discharge.]

[(7) In lieu of discharge sampling data, the permittee must document description of why discharge samples could not be collected when the discharger is unable to collect samples due to climatic conditions which prohibit the collection of samples including weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.). Once dangerous conditions have passed, the permittee shall collect a sample from the retention structure pond or lagoon. The sample shall be analyzed in accordance with paragraph (6) of this subsection.]

[(b) All discharge information and data will be made available to the Executive Director upon request. Signed copies of monitoring reports shall be submitted to the Executive Director if requested at the address specified in the request.]

[(c) Any person who knowingly makes any false statement, representation, or certification in any record or other document submitted or required to be maintained under the provisions of this subchapter, including reports of compliance or noncompliance shall be subject to administrative penalties not to exceed \$10,000 per violation. Such person(s) may also be subject to civil and criminal penalties pursuant to the Texas Water Code, §26.122 and §26.213.]

[(d) The permittee shall retain copies of all records required by this subchapter for a period of at least three years from the date reported. This period may be extended by request of the Executive Director at any time.]

[(e) The permittee shall furnish to the Executive Director, within a reasonable time, any information which the Executive Director may request to determine compliance with the provisions of this subchapter. The permittee shall also furnish to the Executive Director, upon request, copies of records required to be kept by the provisions of this subchapter.]

[(f) When the permittee becomes aware that they failed to submit any relevant facts or submitted incorrect information in any report to the Executive Director, they shall promptly submit such facts or information.]

[(g) All reports or information submitted to the Executive Director shall be signed and certified in accordance with §305.44 of this title (relating to Signatories to Applications).]

[(h) The permittee shall maintain ownership, operation or control over the retention facilities, disposal areas and control facilities identified in the final site plan submitted with the application under §321.184 of this title (relating to Application Requirements). In the event permittee loses ownership, operation or control of any of these areas, the permittee shall notify the Executive Director prior to such loss of control and immediately request and file an application to amend the existing permit-by-rule, an application for a new permit-by-rule under this subchapter or present the Executive Director with a plan to cease all concentrated animal feeding operations at that site.]

[(i) Any permittee required to obtain authorization under §321.183 of this title (relating to Applicability) shall locate and maintain all facilities in accordance with the final site plan submitted with the application as required under §321.184 of this title (relating to Application Requirements). In the event the permittee does not properly locate and maintain such facilities in accordance with the final site plan they shall be deemed in noncompliance with the provisions of this subchapter.]

§321.196. Registration.

[All new animal feeding operations which confine more than 300 animal units and/or any animal feeding operation which confines more than 300 head of a species or combination of species not specifically listed under the definition of CAFO as stated in §321.182 of this title (relating to Definitions) and have a potential to discharge into the waters in the state shall notify the Executive Director of their business name, physical location including a map or hand drawn sketch, mailing address and number of head in confinement. Such notification shall be in writing and signed by the owner/operator and shall be

submitted not later than 180 days of the effective date of these rules or commencement of operation, whichever is later. Additionally, should an animal feeding operation covered by this section change ownership or substantially change the number of head in confinement, that operator shall submit an amended notification. No fees are associated with registration of animal feeding operations under this section.]

[§321.197. Dairy Outreach Program Areas.]

[For the purposes of this subchapter involve all of the following counties: Erath, Bosque, Comanche, Hamilton, Johnson, Hopkins, Wood and Rains. The commission shall review the areas designated under this section on at least a triennial basis to determine whether counties should be deleted or other areas should be added. Areas under this section shall be added or deleted in accordance with the rulemaking process.]

[§321.198. Effect of Conflict or Invalidity of Rule.]

[(a) If any provision of this subchapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of the provisions contained in this subchapter which can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable.]

[(b) To the extent of any irreconcilable conflict between provisions of this subchapter and other rules of the commission, the provisions of this subchapter shall supersede.]

**[SUBCHAPTER M: DISCHARGES TO SURFACE WATERS FROM PETROLEUM BULK
STATIONS AND TERMINALS]**

[§§321.231 - 321.240]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed

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The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

[§321.231. Definitions.]

[The following words and terms, when used in this subchapter shall have the following meanings, unless the context clearly indicates otherwise.]

[(1) Contact Storm water--Storm water which comes into contact with any raw material, product, by-product, co-product, intermediate, petroleum fuel, or waste material.]

[(2) Domestic Sewage--Waterborne human (animal) waste and waste from domestic activities, such as washing, bathing, and food preparation.]

[(3) Existing Facilities--Petroleum Bulk Stations and Terminals in active operation prior to January 5, 1996.]

[(4) Facility Wastewater--Any liquids which are accidentally released from storage, transfer or loading facilities; liquids from equipment cleaning or vehicle maintenance; any water and hydrocarbon mixtures drawn from storage, transfer, or loading facilities; or other similar wastewater associated with petroleum fuel handling. Facility wastewater shall not include domestic sewage.]

[(5) Grab Sample--An individual sample collected in less than 15 minutes.]

[(6) MGD--Million gallons per day.]

[(7) Mg/l--Milligrams per liter.]

[(8) New Facilities--Petroleum Bulk Stations and Terminals not defined in this section as existing facilities.]

[(9) Petroleum Bulk Stations and Terminals (PBST)--Establishments primarily engaged in the cooperative or wholesale distribution of refined petroleum products or petroleum fuels from bulk liquid storage facilities.]

[(10) Petroleum Fuel--Gasoline, diesel fuel, fuel oil, fuel additives, kerosene and jet fuel, or any other petroleum-based material having physical and chemical properties similar to the listed materials and receiving approval by the executive director for designation as a petroleum fuel.]

[(11) Point Source Discharge--A discharge from any discernible, confined and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit or discrete fissure.]

[(12) Publicly Owned Treatment Works or "POTW"--A treatment works owned by a state or municipality, which includes any device or system used in the storage, treatment, recycling, and

reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes or other conveyances only if they convey wastewater to a POTW providing treatment. This term also means the municipality which has jurisdiction over indirect discharges to and discharges from such a treatment works.]

[(13) Registrant--An individual or entity authorized by the executive director to discharge facility wastewater and contact storm water from petroleum bulk stations and terminals under the terms and requirements of this subchapter.]

[(14) Small Petroleum Bulk Stations and Terminal (Small PBST)--An establishment primarily engaged in the cooperative or wholesale distribution of refined petroleum products or petroleum fuels from a bulk liquid storage facility which consists of no greater than 100,000 gallons storage capacity total.]

[(15) Storm water--Storm water runoff, snow melt runoff, surface runoff, and drainage.]

[(16) Treated Facility Wastewater--Facility wastewater which has been biologically, chemically, or mechanically treated, or which has been treated using other advanced treatment methods and achieves a level of treatment which complies with this subchapter.]

[\\$321.232. Purpose and Applicability.]

[(a) The purpose of this subchapter is to regulate by rule the surface discharge of treated facility wastewater, facility wastewater which otherwise meets the effluent limitations of this chapter, and contact storm water from petroleum bulk stations and terminals to surface water in the state. Certificates of registration issued under this subsection are subject to Chapter 50, Subchapter C of this title (relating to Action by Executive Director).]

[(b) Discharges are allowable under this subchapter only by registrants of those facilities which have a certificate of registration issued by the executive director under §321.234 of this title (relating to Certificate of Registration and Public Notice), and which meet the requirements of §321.235 of this title (relating to General Requirements for Discharge) and §321.236 of this title (relating to Specific Requirements for Discharge).]

[(c) This rule does not apply to facilities which are part of a petroleum refinery or facilities which store or transfer non-petroleum products such as organic, inorganic, or toxic chemicals.]

[(d) An application for an emergency order, temporary order, or permit as provided by Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) must be submitted for the discharge of any other wastewater not authorized by this rule to the water in the state.]

[(e) Commission authorization by an emergency order, temporary order, or a separate permit is not required if treated or untreated facility wastewater, or other wastewater is either discharged or transported to a POTW which has a wastewater discharge permit issued by the agency.]

[(f) This rule does not authorize the discharge of any domestic sewage into or adjacent to water in the state. All domestic sewage shall be either routed to an authorized and adequately designed septic tank/drain field system, POTW, or disposed of in accordance with commission regulations.]

[(g) An agency emergency order, temporary order, or permit for discharge of any wastewater from a petroleum bulk station or terminal may supersede the provisions of this rule.]

[(h) Small PBSTs may be exempt from registration if there is no discharge of facility wastewater and if storm water pollution prevention measures are implemented to control storm water runoff, contact storm water run-on, and potential leaks or spills from the tanks and ancillary facilities. Storm water pollution prevention measures shall include, at a minimum, a diked or curbed perimeter surrounding the tank area and ancillary facilities to contain contact storm water runoff and any potential leaks or spills.]

[(i) If the executive director denies a registration application under this subchapter, the facility must obtain a permit under Texas Water Code, Chapter 26.]

[\$321.233. Active Permits.]

[PBSTs that are currently operating under a valid agency wastewater discharge permit may apply for registration of these operations prior to the expiration date of the permit. Upon issuance of the final registration, the executive director shall void the permit. This subchapter does not prevent the executive director from denying a registration or registration application and requiring the facility to have a permit.]

[§321.234. Certificate of Registration and Public Notice.]

[(a) An applicant must apply for registration on a form approved by the executive director. A completed application shall be submitted to the agency's Wastewater Permits Section (MC 148). Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.235 of this title (relating to General Requirements for Discharge) and §321.236 of this title (relating to Specific Requirements for Discharge).]

[(b) The executive director may take action on an application to issue a certificate of registration, provided:]

[(1) At least 30 days prior to approving an application and issuing the certificate of registration, notice of the application has been provided by the applicant, at the applicant's cost:]

[(A) in a newspaper regularly published and generally circulated within the county and area wherein the proposed facility and discharge is to be located;]

[(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and]

[(C) the notices of application are provided in a format approved by the commission and shall fairly set forth the substance of the application and proposed action, including but not limited to, the general location of any point of discharge, the method of obtaining additional information about the application, and the method for submitting comment on the application.]

[(2) With any application for a registration, submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information, which shall consist of:]

[(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and]

[(B) a sworn statement from the applicant that written notice was mailed to the appropriate entities, identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.]

[(3) The application, including the material required by paragraph (2) of this subsection, shall be mailed to the agency's Wastewater Permits Section (MC 148). The application shall undergo review by the executive director following the determination that notice requirements of this section are met.]

[(4) Any pertinent comments received by the executive director prior to the end of the 30-day period, after all the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any other person who submitted comments on the application.]

[(c) The public notice provisions of this section do not apply to a facility which is operating under an agency wastewater discharge permit if the facility applies for registration prior to the expiration date of the permit.]

[(d) Public notice provisions of this section do not apply to an existing facility which is not operating under an agency wastewater discharge permit if an application for registration is received by the executive director within 365 days after the date this rule takes effect.]

[(e) For existing facilities that do not hold a valid agency wastewater discharge permit and are not authorized to discharge by an emergency order or temporary order, an application for registration or an

application for an agency wastewater discharge permit must be submitted within 365 days after the date this rule takes effect.]

[\§321.235. General Requirements for Discharge.]

[(a) Only contact storm water, facility wastewater, and treated facility wastewater which meet the requirements of this subchapter, including the effluent limitations specified in §321.236 of this title (relating to Specific Requirements for Discharge) may be discharged into water in the state.]

[(b) Facility wastewater and contact storm water shall be treated when necessary to conform to effluent discharge limitations, including reductions of total petroleum hydrocarbons, benzene, BTEX, lead, and other possible pollutants and, if necessary, adjustment of pH.]

[(c) Disposal of solid waste shall be in accordance with Chapter 361 of the Texas Health and Safety Code.]

[(d) The discharge shall not cause any nuisance conditions.]

[(e) The discharge shall not be acutely toxic to aquatic life, as described in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).]

[(f) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. Any facility authorized under this subchapter shall comply with the following:]

[(1) The registrant shall report any noncompliance (to include any unauthorized discharges or overflows) with the requirements of this subchapter which may endanger human health or safety or the environment. Report of such information shall be provided orally to the agency's Regional Office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working 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.]

[(2) Any noncompliance which is greater than 40% of the authorized effluent limitations as expressed in §321.236(a) of this title (relating to Specific Requirements for Discharge) shall be reported in writing to the agency's Regional Office and to the agency's Water Section, Enforcement Division (MC 149), within five working days of becoming aware of the condition.]

[(g) The registrant must notify the executive director, in writing, of any change in control or ownership of facilities, or any expansion of facilities authorized under this subchapter. The applicant must send the notification to the agency's Wastewater Permits Section (MC 148).]

[(h) The executive director may deny an application for registration on the following grounds: the potential or actual adverse impact on or close proximity to, a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility or sewage treatment plant. In making such determination, the executive director may also consider other factors necessary to carry out its powers and duties under the Texas Water Code and other laws of the state.]

[§321.236. Specific Requirements for Discharge.]

[(a) Facilities regulated under this rule are authorized to discharge facility wastewater, treated facility wastewater, and contact storm water from point sources in accordance with the following maximum limitations and monitoring requirements.]

[Figure: 30 TAC §321.236(a)]

Parameter	Limitation	Sample Type	Monitoring Frequency (*1)
Flow, MGD	Report	Estimate	1/day
Total Petroleum Hydrocarbons	15 mg/l	Grab	1/week (*3)
Benzene	0.05 mg/l	Grab	1/week (*3)
Total BTEX (*2)	0.5 mg/l	Grab	1/week (*3)
Total Lead	0.25 mg/l	Grab	1/week (*3)

[(*1) If discharge occurs less frequently than the minimum monitoring frequency, then monitoring shall be conducted for each discharge event. For a discharge consisting of contact stormwater only, the sample shall be obtained within 60 minutes after discharge begins.]

[(*2) Benzene, toluene, ethyl benzene, xylene]

[(*3) The executive director may authorize a reduced monitoring frequency of one/two weeks upon the written request of a registrant where demonstrated compliance with the effluent limitations has been maintained for a period of two years. If the registrant fails to maintain compliance with the effluent limitations after the reduction in monitoring frequency, the executive director may direct the registrant to resume weekly monitoring.]

[(b) The pH of the discharge shall not be less than 6.0 standard units nor greater than 9.0 standard units and shall be monitored once per week (*1) by grab sample.]

[(c) There shall be no discharge of floating solids or visible foam in other than trace amounts and no discharge of visible oil.]

[(d) Monitoring and reporting requirements for lead are suspended if none of the substances stored at the facility include refined petroleum products or petroleum fuels containing lead or lead additives. If at a later date refined petroleum products or petroleum fuels containing lead or lead additives are stored, then monitoring and reporting requirements for lead are resumed.]

[(e) All discharges from petroleum bulk stations and terminals shall comply with §319.22 of this title (relating to Quality Levels--Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels--Tidal Waters).]

[§321.237. Sampling, Reporting, and Recordkeeping.]

[(a) Unless otherwise specified in this subchapter, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).]

[(b) Results of monitoring of each constituent specified in §321.236 of this title (relating to Specific Requirements for Discharge) shall be reported by the registrant to the executive director on the Petroleum Bulk Stations and Terminals Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule.]

[Figure: 30 TAC §321.237(b)]

<u>Monitoring Period</u>	<u>Report Due</u>
January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

[(c) The registrant shall maintain results of monitoring of each constituent specified in §321.236 of this title (relating to Specific Requirements for Discharge) or the equivalent information shall be

maintained for a minimum of three years and shall make these results readily available for review upon request. The registrant authorized under the terms of this subchapter shall maintain records of the process control, maintenance activities, and solids disposal to include at a minimum: volume and dates on which solids were removed, identity of any transporter, location and identity of any solids disposal site, and method of final disposal. This information shall be maintained for a minimum of three years and shall be readily available for review upon request.]

[\§321.238. Restrictions.]

[(a) This rule does not convey property rights or grant any exclusive privilege.]

[(b) Nothing in this rule shall be construed to authorize any injury to persons or property, or an invasion of other property rights, or any infringement of state or local law or regulations.]

[(c) Separate authorizations may be required by the executive director, municipalities, or other agencies for discharges to publicly owned treatment works, domestic sewage plants, storm water sewers, or for air emissions.]

[\§321.239. Enforcement and Revocation.]

[If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by the Texas Water Code and in accordance with Chapter 70 of this title (relating to Enforcement). The executive director may revoke any registration granted to a registrant or facility due to noncompliance with the requirements of this subchapter, after notice to the registrant and opportunity for hearing, and such registrant shall cease any discharge until such time as the facility is issued a wastewater discharge permit, an emergency order, or temporary order as provided by Chapter 35 of this title (relating to Emergency and Temporary Orders and Permits; Temporary Suspension or Amendment of Permit Conditions) for the discharge of wastewater into or adjacent to water in the state. The executive director may require a small PBST defined as exempt from registration under §321.232(h) of this title (relating to Purpose and Applicability) to register under the terms of this subchapter if an exempt facility is causing water pollution that could be avoided through compliance with the requirements of this subchapter.]

[§321.240. Annual Waste Treatment Fee.]

[(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge to surface waters from petroleum bulk stations and terminals under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.]

[(b) The fee assessed annually shall be in accordance with the following fee rate schedule:]

[(1) for any active facility, the fee shall be \$500, as determined by either the information specified on the application for registration or on the Petroleum Bulk Stations and Terminals Report form submitted during the calendar year.]

[(2) for any inactive facility, the fee shall be \$250.]

[(3) any increased assessment above the amounts in paragraphs (1) or (2) of this subsection shall be in accordance with regulations adopted by the commission.]

[SUBCHAPTER O: DISCHARGES FROM AQUACULTURE PRODUCTION FACILITIES]

[§§321.271 - 321.280]

STATUTORY AUTHORITY

The repeals are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the TWC and other laws of the state; §5.102, which establishes the commission's general authority to carry out its jurisdiction; §5.103(a) and §5.105, which provide the commission with the authority to adopt rules and policies necessary to carry out its powers and duties under the TWC and other laws of the state; §5.120, which states the commission shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state; §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and §26.027, which authorizes the commission to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. Also, §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3, provides that a rule adopted by the commission under §26.040 of Texas Water Code remains in effect until amended or repealed.

The proposed repeals implement TWC, §§5.013, 5.102, 5.103(a), 5.105, 5.120, 26.011, and 26.027. The proposed repeals also implement §8.03 of Acts 2003, 78th Legislature, 3rd Called Session, Chapter 3.

[§321.271. Definitions.]

[The following words and terms, when used in this subchapter, have the following meanings.]

[(1) Aquaculture facility or aquaculture production facility--An establishment engaged in the propagation and/or rearing of aquatic species which utilizes ponds, lakes, fabricated tanks and raceways, or other similar structures. Individually owned, managed, or leased ponds may be considered as a single aquaculture facility if they are located within a contiguous tract of land, utilize a common water source, or utilize a common discharge canal/route. For the purposes of this subchapter, an aquaculture facility does not include: cages or other enclosures placed within public waters for the propagation or rearing of aquatic species; public and private reservoirs constructed and utilized primarily for water supply, flood control, domestic purposes, livestock watering, recreation, or similar uses; or retail bait dealers who are not required by the Texas Parks and Wildlife Department to obtain an exotic species permit.]

[(2) Aquatic species--Fish, crustaceans, mollusks, or any other organisms occurring within either fresh or salt waters.]

[(3) Best management practices (BMP)--Schedule of activities, maintenance procedures, and other management practices to prevent or reduce the pollution of water in the state. BMPs also include treatment requirements, operating procedures, and practices to control site runoff, spillage or leaks, sludge or waste disposal, drainage from raw material storage, or the abatement of nuisance odors and conditions. BMPs are those measures that are reasonable and necessary to achieve a performance

standard that protects and maintains air and water quality standards as well as existing and potential uses of groundwater.]

[(4) Closed ponds--Ponds (or lakes) without a mechanism to manipulate water levels (except for emergency spillways and other similar nonmechanical structures) or those ponds that are operated such that drawdowns are not allowed. If the use of groundwater wells or the diversion of surface water results in dry-weather discharges, such ponds are not defined as closed ponds.]

[(5) Coastal zone--That area along the Texas coast of the Gulf of Mexico as depicted in this definition. The boundary includes areas within the following Texas counties: Cameron, Willacy, Kenedy, Kleberg, Nueces, San Patricio, Aransas, Refugio, Calhoun, Victoria, Jackson, Matagorda, Brazoria, Galveston, Harris, Chambers, Liberty, Jefferson, and Orange.]

[Figure: 30 TAC §321.271(5)]

[(A) The inland boundary is delineated as: The boundary begins at the International Toll Bridge in Brownsville, thence northward along U.S. Highway 77 to the junction of Paredes Lines Road (FM Road 1847) in Brownsville, thence northward along FM Road 1847 to the junction of FM Road 106 east of Rio Hondo, thence westward along FM Road 106 to the junction of FM Road 508 in Rio Hondo, thence northward along FM Road 508 to the junction of FM Road 1420, thence northward along FM Road 1420 to the junction of State Highway 186 east of Raymondville, thence westward along State Highway 186 to the junction of U.S. Highway 77 near Raymondville, thence northward along U.S. Highway 77 to the junction of FM Road 774 in Refugio, thence eastward along FM Road 774 to the junction of State Highway 35 south of Tivoli, thence northward along State Highway 35 to the junction of State Highway 185 between Bloomington and Seadrift, thence northwestward along State Highway 185 to the junction of FM Road 616 in Bloomington, thence northeastward along FM Road 616 to the junction of State Highway 35 east of Blessing, thence southward along State Highway 35 to the junction of FM Road 521 north of Palacios, thence northeastward along FM Road 521 to the junction of State Highway 36 south of Brazoria, thence northward along State Highway 36 to the junction of State Highway 332 in Brazoria, thence eastward along State Highway 332 to the junction FM Road 2004 in Lake Jackson, thence northeastward along FM Road 2004 to the junction of Interstate Highway 45 between Dickinson and La Marque, thence northwestward along Interstate Highway 45 to the junction of Interstate Highway 610 in Houston, thence east and northward along Interstate Highway 610 to the junction of Interstate Highway 10 in Houston, thence eastward along Interstate Highway 10 to the Louisiana State line.]

[(B) The tidal boundary is delineated as: The boundary runs a distance of 100 yards inland from the mean high tide lines along each of the following tidal river and stream segments from the points where they intersect the roadway boundary described in subparagraph (A) of this definition:]

[(i) on the Arroyo Colorado, to a point 100 meters (110 yards) downstream of Cemetery Road south of Port Harlingen in Cameron County;]

[(ii) on the Nueces River, to Calallen Dam 1.7 kilometers (1.1 miles) upstream of U.S. Highway 77 in Nueces/San Patricio County;]

[(iii) on the Guadalupe River, to the Guadalupe-Blanco River Authority Salt Water Barrier 0.7 kilometers (0.4 mile) downstream of the confluence of the San Antonio River in Calhoun and Refugio Counties;]

[(iv) on the Lavaca River, to a point 8.6 kilometers (5.3 miles) downstream of U.S. Highway 59 in Jackson County;]

[(v) on the Navidad River, to Palmetto Bend Dam in Jackson County;]

[(vi) on Tres Palacios Creek, to a point 0.6 kilometer (1.0 mile) upstream of the confluence of Wilson Creek in Matagorda County;]

[(vii) on the Colorado River, to a point 2.1 kilometers (1.3 miles)
downstream of the Missouri-Pacific Railroad in Matagorda County;]

[(viii) on the San Bernard River, to a point 3.2 kilometers (2.0 miles)
upstream of State Highway 35 in Brazoria County;]

[(ix) on Chocolate Bayou, to a point 4.2 kilometers (2.6 miles)
downstream of State Highway 35 in Brazoria County;]

[(x) on Clear Creek, to a point 100 meters (110 yards) upstream of FM
Road 528 in Galveston/Harris County;]

[(xi) on Buffalo Bayou, to a point 400 meters (440 yards) upstream of
Shepherd Drive in Harris County;]

[(xii) on the San Jacinto River, to Lake Houston Dam in Harris County;]

[(xiii) on Cedar Bayou, to a point 2.2 kilometers (1.4 miles) upstream of
Interstate Highway 10 in Chambers/Harris County;]

(xiv) on the Trinity River, to a point 3.1 kilometers (1.9 miles)
downstream of U.S. Highway 90 in Liberty County;]

(xv) on the Neches River, to a point 11.3 kilometers (7.0 miles) upstream of Interstate Highway 10 in Orange County;]

[(xvi) on the Sabine River, to Morgan Bluff in Orange County.]

[(C) The wetlands portion of the boundary is delineated as: except for the part of the boundary adjacent to the Trinity and Neches Rivers, the boundary includes wetland lying one mile inland of the mean high tide lines of the tidal river and stream segments identified in the description of the tidal boundary, subparagraph (B) of this definition.]

[(i) Adjacent to the Trinity River, the boundary includes wetlands within the area located between the mean high tide line on the western shoreline of the river and FM Road 565 and FM Road 1409, and wetlands within the area located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 563.]

[(ii) Adjacent to the Neches River, the boundary includes wetlands within one mile of the mean high tide line on the western shoreline of the river, and wetlands within the area located between the mean high tide line on the eastern shoreline of that portion of the river and FM Road 105.]

[(D) The boundary with the State of Louisiana is delineated as: The boundary begins in Orange County at Morgans Bluff, the northernmost extent of tidal influence, along the adjudicated boundary between the State of Texas and the State of Louisiana; thence it continues in a southerly direction along the adjudicated boundary out into the Gulf of Mexico until it intersects the seaward boundary.]

[(E) The seaward boundary is delineated as: That line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 United States Code (USC), §§1301 *et seq.*.)]

[(F) The boundary with the Republic of Mexico is delineated as: The boundary begins at a point three marine leagues into the Gulf of Mexico where the line marking the seaward limit of Texas title and ownership under the Submerged Lands Act (43 USC, §§1301 *et seq.*) intersects the international boundary between the United States and the Republic of Mexico; thence it continues in a westerly direction along the international border with the Republic of Mexico until it meets the International Toll Bridge in Brownsville.]

[(6) Cold water aquatic species--Fish in the family *Salmonidae* (trout and salmon).]

[(7) Daily average flow--The arithmetic average of all determinations of the daily discharge within a period of one calendar month. The daily average flow determination shall consist of determinations made on at least four separate days. If instantaneous measurements are used to determine

the daily discharge, the determination shall be the arithmetic average of all instantaneous measurements taken during that month. Daily average flow determination for intermittent discharges shall consist of a minimum of three flow determinations on days of discharge.]

[(8) Daily maximum concentration--The maximum concentration measured on a single day within a period of one calendar month.]

[(9) Domestic sewage--Waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation.]

[(10) Edwards Aquifer--As defined under §213.3 of this title (relating to Definitions), that portion of an arcuate belt of porous, water-bearing, predominantly carbonate rocks known as the Edwards and Associated Limestones in the Balcones Fault Zone trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Formation, and Georgetown Formation. The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut Formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.]

[(11) Edwards Aquifer Recharge Zone--Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in

proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as that area designated as such on official maps located in the offices of the Texas Commission on Environmental Quality and the appropriate underground water conservation district.]

[(12) Existing facilities--Aquaculture production facilities in active operation, and that have discharged, during the calendar year previous to the effective date of this rule.]

[(13) Grab sample--An individual sample collected in less than 15 minutes.]

[(14) Licensed professional geoscientist--A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.]

[(15) mg/L--Abbreviation for milligrams per liter.]

[(16) New facilities--Aquaculture production facilities not in active operation and that have not discharged wastewater during the calendar year previous to the effective date of this rule.]

[(17) Nuisance--Any emission of air contaminant(s), including but not limited to odors, that is of sufficient concentration and duration so as to be injurious or potentially injurious to human

health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property.]

[(18) Operator--Any person or entity in control of or having responsibility for the daily operation of an aquaculture production facility.]

[(19) Pond bottom sludges--Accumulations of silt, soils, and other matter in the bottom of ponds.]

[(20) Process controls--Structures, technologies, and practices used to control the rate, volume, or quality of a discharge.]

[(21) Production pond--Earthen ponds, raceways, fabricated tanks, or similar structures utilized in conjunction with the propagation or rearing of aquatic species.]

[(22) Production--Weight of aquatic species as measured following harvest and prior to processing.]

[(23) Publicly owned treatment works (POTW)--A treatment works owned and operated by a state or municipality which includes any device or systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature. This definition includes sewers, pipes, or other conveyances only if they convey wastewater to a POTW providing treatment. This

term also means the municipality that has jurisdiction over indirect discharges to, and discharges from, such a treatment works.]

[(24) Registrant--An individual or entity authorized by the executive director to discharge wastewater from aquaculture facilities under the terms and requirements of a registration issued under this subchapter.]

[(25) Shrimp research facilities--Facilities whose primary purpose is the scientific research of shrimp aquaculture methods, disease control, waste control, wastewater treatment technology, and similar subjects.]

[(26) Tailwater control--Diked or bermed area, pond, or other similar structure placed down-gradient of an irrigation site and designed to prevent off-site runoff or runoff to waters in the state.]

[(27) Total residual chlorine--Chlorine concentration of the wastewater when discharged.]

[(28) Warm water aquatic species--All aquatic species except those in the family Salmonidae (trout and salmon).]

[(29) Wastewater management pond--Any structure used for containment, detainment, or treatment of wastewater, including settling ponds and canals used to transport wastewater from the production pond to a settling pond or discharge point.]

[(30) Waste management unit--Any structure used for containment, detainment, storage, processing, or treatment of solid wastes.]

[(31) Wastewater--Water that is a result of the following operations:]

[(A) propagation, rearing, or transportation of aquatic species;]

[(B) washdown, cleaning, and flushing of fabricated tanks, raceways, ponds, and other containment structures;]

[(C) washdown and cleaning of equipment; or]

[(D) washing, treating, or any other direct contact with aquatic species.]

[(32) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years (4% probability of occurrence in a given year), with a duration of 24 hours, as defined by the National Weather Service in Technical Paper Number 40, "Rainfall Frequency Atlas of the United States," May 1961, and subsequent amendments, or equivalent information developed there from.]

[\S321.272. Purpose and Applicability.]

[(a) The purpose of this subchapter is to specify which aquaculture facilities may be authorized by rule and which facilities are required to obtain an individual permit to discharge wastewater into or adjacent to waters in the state. Additionally, it is the purpose of this subchapter to regulate by registration, or to exempt from permitting or registration, certain aquaculture facilities for which it is not practical to issue individual permits because of the general nature of waste discharge from such facilities, the relatively small-quantity discharges of waste being made, and because it would be unnecessarily burdensome to both the waste discharger and the commission to require individual permits.]

[(b) An aquaculture facility that discharges within the coastal zone, and that discharges to waters in the state, may not receive authorization for discharge under this rule and must obtain an individual wastewater discharge permit in accordance with Chapter 305 of this title (relating to Consolidated Permits) if the facility contains, grows, or holds aquatic species as described in any of the following three categories:]

[(1) Cold water aquatic species in ponds, raceways, or other similar structures that discharge at least 30 days per year and:]

[(A) produce more than 20,000 pounds harvest weight of aquatic species per year; and]

[(B) feed more than 5,000 pounds of food during the calendar month of maximum feeding.]

[(2) Warm water aquatic species in ponds, raceways, or other similar structures that discharge at least 30 days per year and produce more than 100,000 pounds harvest-weight of aquatic species per year. This does not include those facilities that utilize closed ponds that discharge only during periods of excess storm water runoff.]

[(3) Shrimp species in ponds, raceways, or other similar structures at:]

[(A) a shrimp research facility that discharges less than 30 days per year but at a flow rate that exceeds five million gallons on any single day of discharge; or]

[(B) any other shrimp aquaculture facility regardless of production or discharge quantity.]

[(c) An aquaculture facility that discharges to waters in the state located outside of the coastal zone, as defined in §321.271 of this title (relating to Definitions), and that exceeds the thresholds described in either subsection (b)(1), (2) or (3) of this section must obtain a certificate of registration issued by the executive director unless the executive director determines that a permit is required pursuant to subsection (d) of this section.]

[(d) The executive director may require any aquaculture facility that discharges into or adjacent to waters in the state to obtain either an individual permit or a certificate of registration, regardless of the

criteria in subsection (b) of this section. In making this designation, the executive director shall consider, at a minimum, the following factors:]

[(1) the facility's ability to protect water quality while operating within the terms of its registration or exemption;]

[(2) the location of the facility and quality of the receiving waters in the state;]

[(3) the holding, feeding, and production capacities of the facility and the proximity of other aquaculture facilities conducting similar operations;]

[(4) the quantity and nature of the pollutants reaching waters in the state;]

[(5) the quantity and frequency of the discharge;]

[(6) the results of any on-site inspection of such an aquaculture facility;]

[(7) the operation's impact upon existing and potential uses of ground-water resources;]

[(8) the operation's ability to comply with the standards and requirements of this subchapter applicable to registrants; and]

[(9) whether, because of the nature of the discharge and the quality of the receiving waters in the state, the discharge should be regulated by individual permit or by registration.]

[(e) An aquaculture facility that is not required to obtain a permit under subsection (b) of this section and that is not required to obtain a registration under subsection (c) of this section shall be considered initially as conditionally exempt. Operators of such facilities shall meet the following requirements in order that the executive director may assess whether the facility shall be considered as exempt, required to obtain an individual permit, or required to obtain a certificate of registration in accordance with subsection (d) of this section.]

[(1) The operator shall provide written notification to the executive director prior to generating wastewater from a new facility that meets the description of conditionally exempt. The operator of an existing facility which meets the description of conditionally exempt must mail written notification within 180 days of the effective date of this subchapter. Notification shall include, at a minimum, the following information and be provided to the executive director on approved forms:]

[(A) name and address of the facility operator;]

[(B) physical location of the facility as described by latitude and longitude;]

[(C) description of the discharge route of effluent from the facility for a minimum distance of three miles;]

[(D) description of the number and sizes of production ponds;]

[(E) description of the quantity and frequency of the discharge;]

[(F) description of the quantity and nature of the pollutants reaching waters in the state;]

[(G) description of process controls or wastewater management ponds utilized;]

[(H) list of aquatic species produced and estimated annual production in pounds; and]

[(I) proximity to other aquaculture facilities.]

[(2) Following receipt of notification from a conditionally exempt facility, the operator will be notified:]

[(A) the facility is considered as exempt; or]

[(B) the operator must submit additional information for evaluation; or]

[(C) an individual permit is required in accordance with subsection (d) of this section; or]

[(D) authorization by registration is required in accordance with subsection (d) of this section.]

[(f) Operators of any aquaculture facilities exempt from registration or permit under this section must construct and manage facilities to protect the water quality standards of surface water and the existing and potential uses of ground water. Any exempt facility that does not discharge wastewater directly into surface waters, but instead disposes of wastewater adjacent to waters in the state (such as by land application, evaporation, or irrigation) must comply with any applicable provisions of §321.275 of this title (relating to Waste Utilization or Disposal by Land Application of Wastewater and Pond Bottom Sludges). Any exempt facility must additionally notify the executive director, in writing, within 30 days of any change in control or ownership of facilities, change or addition in the aquatic species produced, increase in the number of production ponds, or expansion of existing production ponds.]

[(g) Operators of aquaculture facilities who would be otherwise eligible to obtain registration under this section but who either are unable or choose not to implement all required best management practices (BMPs) set forth in §321.277 of this title (relating to Required Best Management Practices) are required to apply for an individual permit under Chapter 305 of this title (relating to Consolidated Permits), within 180 days of the date this rule takes effect.]

[(h) Operators of aquaculture facilities exempt from registration and permit under this section, who subsequently expand facilities, production, or discharge days resulting in exceedance of the criteria in subsections (b) and/or (c) of this section, must submit either an application for registration or an application for individual permit within 45 days following exceedance of the criteria.]

[(i) Any new facility required to obtain either registration or an individual permit may not commence operation of any waste management unit without first receiving either authorization in accordance with this subchapter, an individual permit, or authorization for the construction. Any expanding facility, described by §321.272(h) of this title, may not commence operation of any new waste management unit without first receiving authorization in accordance with this subchapter, an individual permit, or authorization for the construction.]

[(j) Discharges associated with the processing of aquatic organisms by packing as fresh or frozen product, canning, smoking, salting, drying or otherwise curing, or rendering for use as human or animal food are not authorized by this subchapter.]

[(k) Discharges associated with the propagation or rearing of aquatic species utilizing cages or other enclosures which are placed within public waters are not authorized by this chapter. Operators are required to apply for an individual permit under Chapter 305 of this title, within 180 days after the date this rule takes effect.]

[(l) Registration under this rule does not convey property or water rights of any sort and does not grant any exclusive privilege.]

[(m) An existing aquaculture facility subject to permitting or registration requirements under this section that does not hold a valid commission wastewater discharge permit must submit an application for registration or an application for an individual permit within 180 days after the date this rule takes effect.]

[[§321.273. Certificate of Registration and Public Notice.]

[(a) An applicant must apply for registration on a form approved by the executive director. A completed application shall be submitted to the commission's Wastewater Permits Section, P.O. Box 13087 (MC-148), Austin, Texas 78711-3087. Before issuing a certificate of registration, the executive director will review the application to determine whether the facility operations meet the requirements of §321.274 of this title (relating to Ground-Water Protection), §321.275 of this title (relating to Waste Utilization or Disposal by Land Application of Wastewater and Pond Bottom Sludge), §321.276 of this title (relating to Edwards Aquifer), and §321.277 of this title (relating to Required Best Management Practices).]

[(b) The registrant must notify the executive director, in writing, 30 days prior to any change in control or ownership of facilities, change or addition to the aquatic species produced, increase in the number of production ponds, or expansion of existing production ponds. The registrant must notify the

executive director, in writing, at least 30 days following harvest if annual production exceeds criteria specified in §321.272(b) of this title (relating to Purpose and Applicability).]

[(c) The executive director may take action on an application to issue a certificate of registration if the following actions regarding public notice are met.]

[(1) At least 30 days prior to executive director approval of an application and issuance of the certificate of registration, notice of the application shall be provided at the applicant's cost:]

[(A) in a newspaper regularly published and generally circulated within the county and area where the proposed facility and discharge are to be located;]

[(B) in writing by certified mail (return receipt requested) to the county judge of the county in which the facility is to be located and also, when the facility is to be located within the jurisdictional boundaries of a city or town, to the mayor of that city or town; and]

[(C) in a format approved by the executive director and setting forth the substance of the application and proposed action including, but not limited to, the general location of any point of discharge, the method for obtaining additional information about the application, and the method for submitting comment on the application.]

[(2) With any application for registration submitted pursuant to this subchapter, the applicant shall also provide proof to the executive director that public notice was provided in accordance with paragraph (1) of this subsection. The proof shall be provided within 14 days of obtaining the following information:]

[(A) a signed affidavit from the publisher acknowledging that the notice was published, indicating the date of publication, and providing a copy of the newspaper clipping; and]

[(B) a sworn statement from the applicant that written notice was mailed to the entities identified in this subsection, along with a copy(s) of the return receipt acknowledgment from the U.S. Postal Service.]

[(3) The applicant shall mail the application, including the material required by paragraph (2) of this subsection, to the commission's Wastewater Permits Section, P.O. Box 13087 (MC 148), Austin, Texas 78711-3087. The application shall undergo review by the executive director following the determination that notice requirements of this section are met.]

[(4) Any comments received by the executive director prior to the end of the 30-day period, after all of the notices have been provided, will be considered as a part of any decision of approval, denial, or modification of a request for registration from an applicant. The executive director shall mail notice of the final decision to the applicant and to any person who submitted comments on the

application. A person who wishes to appeal the executive director's decision on the application shall file a motion for reconsideration, under §50.39 of this title (relating to Motion for Reconsideration).]

[(5) The executive director may deny an application for registration based on the potential or actual adverse impact, or close proximity to a public park, school, recreational area, spring, water supply well, surface water supply intake, water treatment plant intake, potable water storage facility, or sewage treatment plant. A determination of potential adverse impact may arise from consideration of such factors as proposed flow rate, production rate, or nature of the receiving stream. In making such a determination, the executive director may also consider other factors, as necessary.]

[§321.274. Groundwater Protection.]

[(a) Wastewater management ponds and production ponds that contain water with a total dissolved solids content in excess of 2,000 milligrams per liter (mg/L) and all wastewater management ponds and production ponds that are located within the Edwards Aquifer Recharge Zone, regardless of total dissolved solids content, must conform to the following requirements.]

[(1) All ponds whether constructed of earthen or other impervious material must be designed and constructed to prevent groundwater contamination.]

[(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be comprised of compacted material, at least 24 inches

thick, compacted in lifts not greater than six inches thick and compacted to 95% of Standard Proctor Density. Soil liners must meet the following particle size gradation and Atterberg limits: 30% or more passing a Number 200 mesh sieve; a liquid limit of 30% or greater; and a plasticity index of 15 or greater and a permeability less than, or equal to, 1×10^{-7} centimeters per second (cm/sec).]

[(B) Synthetic membrane linings shall have a minimum thickness of 40 mils with a leak detection system.]

[(C) In-situ liners at least 24 inches thick and meeting a permeability less than, or equal to, 1×10^{-7} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.]

[(D) In-situ or emplaced soil or compacted clay liners must be proven, by laboratory or field testing, to retain their permeability characteristics when exposed to the quality of water proposed to be contained in the pond, i.e., saline or other water shall not chemically alter the liner in such a manner that the permeability is increased over the above standard.]

[(E) Signed, sealed, and dated certification shall be furnished by a Texas licensed professional engineer or licensed professional geoscientist that the pond lining meets the appropriate criteria prior to using the facilities.]

[(2) Soils used in the construction of a pond's embankment walls shall be free of foreign material such as paper, brush, trees, and large rocks. Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. Soil embankment walls must be constructed of material compacted in lifts no greater than six inches to 95% of Standard Proctor Density. All soil embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.]

[(b) Production ponds and wastewater management ponds using water that will not exceed a total dissolved solids concentration of 2,000 mg/L and are not located within the Edwards Aquifer Recharge Zone, and those ponds that are not constructed in accordance with subsection (a) of this section must conform to the following requirements.]

[(1) All ponds whether constructed of earthen or other impervious materials must be designed and constructed to prevent groundwater contamination.]

[(A) Soils used for pond lining shall be free from foreign material such as paper, brush, trees, and large rocks. All soil liners must be of compacted material, at least 24 inches thick, compacted in lifts no great than six inches and with material that has a permeability less than, or equal to, 1×10^{-4} cm/sec.]

[(B) Synthetic membrane linings shall have a minimum thickness of 40 mils and a leak detection system.]

[(C) In-situ liners at least 24 inches thick and meeting a permeability less than, or equal to, 1×10^{-4} cm/sec are acceptable alternatives to the requirements of subparagraphs (A) and (B) of this paragraph.]

[(D) Signed, sealed, and dated certification shall be furnished by a Texas licensed professional engineer or licensed professional geoscientist that the pond lining meets the appropriate criteria prior to using the facilities.]

[(2) Soils used in the construction of a pond's embankment walls shall be free of foreign material such as paper, brush, trees, and large rocks. Soil embankment walls shall have a top width of at least five feet. The interior and exterior slopes of soil embankment walls shall be no steeper than one foot vertical to three feet horizontal unless alternate methods of slope stabilization are utilized. Soil embankment walls must be constructed of material compacted in lifts not greater than six inches to 95% of Standard Proctor Density. All soil embankment walls shall be protected by a vegetative cover or other stabilizing material to prevent erosion. Erosion stops and water seals shall be installed on all piping penetrating the embankments.]

[(c) An alternative method of pond lining, which will meet the performance standards provided by this section, may be utilized with the prior written approval of the executive director. Suitable

materials for alternate pond linings may include impervious materials such as flexible membrane linings, asphalt-sealed fabric liners, and bentonite sealants. Installation of bentonite sealants and flexible membrane linings shall be in accordance with a detailed plan which meets the conservation practice standard and specification code 521, "Pond Sealing or Lining," of the United States Department of Agriculture Natural Resources Conservation Service.]

[(d) A specific exemption from the groundwater protection requirements of this section may be obtained from the executive director if, after the review of data submitted by the applicant, the executive director determines containment of the water in a production pond or wastewater management pond is not necessary, considering:]

[(1) soil and geologic data, and groundwater data, including its quality, uses, quantity, and yield; and]

[(2) adequate demonstration that impairment of groundwater for its actual or potential use will be prevented.]

[(e) Earthen ponds in existence on the date this subchapter becomes effective shall be exempt from the requirements of subsections (a), (b), or (c) of this section provided that:]

[(1) exemption does not conflict with permit terms and conditions of previously issued permits that specifically require the lining of ponds, and]

[(2) operation of such ponds does not cause an adverse impact upon groundwater.]

[(f) Whenever the discharge of waste or wastewater into groundwater occurs or is likely to occur which could cause degradation of groundwater quality, the executive director may require compliance with the provisions of subsections (a), (b), and (c) of this section.]

[\§321.275. Waste Utilization or Disposal by Land Application of Wastewater and Pond Bottom Sludges.]

[(a) If the registrant utilizes land application for disposal of wastewater or solid waste, the following requirements shall apply.]

[(1) Management of solid waste.]

[(A) All solid waste stockpiled or retained on-site shall be isolated from all runoff of stormwater by dikes, terraces, berms, ditches, or other similar structures and shall be maintained so as to retain the volume of rainfall generated by a 25-year, 24-hour storm event.]

[(B) Adequate solid waste storage capacity shall be provided and be based upon waste production.]

[(C) All management of solid waste shall be conducted so as not to create a nuisance condition.]

[(2) Practices to protect ground-water.]

[(A) Waste management units must be located a minimum horizontal distance from water wells, in accordance with Chapter 290 of this title (relating to Water Hygiene) and Chapter 238 of this title (relating to Water Well Drillers and Water Well Pump Installers), or where those regulations do not apply, the distance to a water well shall be a minimum of 500 feet.]

[(B) When applying waste or wastewater to land, a buffer area must be utilized around water wells to prevent the possibility of waste transport to ground-water via the well or well casing. Wastewater may not be applied closer than 500 feet from any drinking water well.]

[(3) Utilization and disposal methods.]

[(A) When applying liquid and solid waste on agricultural lands, distribution shall be such that neither the waste nor rainfall runoff will adversely affect the quality of waters in the state.]

[(B) When irrigation disposal of wastewater is used, tailwater controls shall be provided as necessary to prevent the release of applied wastewater to waters in the state. Irrigation

practices shall be managed so as to reduce or minimize ponding or puddling of wastewater on the site and to prevent contamination of waters in the state and the occurrence of nuisance conditions.]

[(C) Disposal of waste and wastewater shall be done in such a manner as to prevent nuisance conditions.]

[(D) Irrigation shall not be conducted when the ground is frozen or saturated or during rainfall events.]

[(4) Application rates. Liquid and solid waste or wastewater shall be applied in such concentrations, and application shall be made at such intervals, as to not inhibit the growth of crops or forage or result in wastewater runoff.]

[(b) The registrant shall comply with the following conditions if other solid waste management occurs on-site, or if solid waste is disposed of off-site.]

[(1) The registrant shall keep management records for all sludge (or other waste) removed for disposal. Records must include the following, at a minimum:]

[(A) volume of waste disposed of off-site;]

[(B) origin and general composition of waste;]

[(C) date(s) of disposal;]

[(D) identity of hauler or transporter;]

[(E) location of disposal site; and]

[(F) method of final disposal.]

[(2) The records provided by paragraph (1) of this subsection shall be maintained on a monthly basis at the facility or shall be readily available for inspection by authorized representatives of the executive director for at least three years.]

[(c) Removal of pond bottom sludges (or other solids) from production ponds or wastewater management ponds shall be conducted during favorable wind conditions that carry odors away from nearby receptors such as residences, businesses, and public buildings. At no time shall emissions from any activity create a nuisance.]

[\§321.276. Edwards Aquifer.]

[New aquaculture production facilities located within the Edwards Aquifer Recharge Zone or within ten miles upstream from that recharge zone must meet all applicable requirements of and operate in accordance with Chapter 213 of this title (relating to Edwards Aquifer).]

[§321.277. Required Best Management Practices and Specific Requirements for Discharge.]

[(a) The following Best Management Practices (BMPs) are required and shall be utilized to abate the discharge of suspended solids and other pollutants.]

[(1) Harvest operations which utilize seining techniques may dewater the pond without detention of the effluent to a maximum of three-fourths the total volume of the pond or until seining operations commence, whichever occurs first. The remaining volume of water shall be detained (either within the same pond or transferred to a separate detainment structure) a minimum of 48 hours prior to discharge to allow settling of solids and associated pollutants.]

[(2) Harvest operations which require complete dewatering shall transfer the final one-fourth volume of the pond to a separate detainment structure. This volume shall be detained a minimum of 48 hours prior to final discharge to allow settling of solids and associated pollutants.]

[(3) Exemption from the requirements of paragraphs (1) and (2) of this subsection is allowed if the volumes of water defined by paragraphs (1) and (2) of this subsection as requiring detention do not exceed a total suspended solids concentration of 30 mg/l. Compliance shall be

demonstrated by analysis of a composite sample of the discharge. If harvest operations are conducted upon multiple ponds within a single day, a single sample may be obtained for laboratory analysis. Such a sample shall be obtained by combining (in flow-weighted proportions) composite samples of discharges described in paragraphs (1) and (2) of this subsection which originate from separate ponds.]

[(4) All discharges shall be controlled such that flow rates minimize any increase in turbidity of the receiving stream due to erosion or suspension of sediments. Discharges shall not cause substantial and persistent changes from ambient conditions of turbidity and color.]

[(5) Earthen levees and dikes shall be vegetated or stabilized in a manner to control erosion. Vegetation, when utilized, shall be maintained at all times through mowing, watering, or other suitable maintenance practices.]

[(b) The following BMPs are required and shall be utilized to abate the discharge of toxic substances from maintenance of equipment and treatment of aquatic species.]

[(1) When chlorine is used for disinfection of equipment, raceways, tanks, or other similar structures, the effluent shall not exceed 4.0 mg/l total residual chlorine as measured by grab sample. The discharge of these wastewaters shall be sampled and analyzed in accordance with requirements of subsection (c) of this section. Test procedures shall comply with those specified in §§319.11-319.12 of this title (relating to Sampling and Laboratory Testing Methods and Alternate Sampling and Laboratory Testing Methods). Large-scale disinfection (such as disinfection of production

ponds, water distribution canals or lakes) which results in discharge is not authorized under provisions of this subchapter.]

[(2) When lime is used for disinfection of production pond bottoms, water distribution canals, and other similar facilities, there shall be no discharge allowed until pH levels of the wastewater are adjusted to within a range of 6.0 to 9.0 standard units.]

[(3) Only drugs, medications and chemicals approved by the United States Environmental Protection Agency (EPA) or the United States Food and Drug Administration (FDA) for aquaculture use may be used in water which will be discharged. Treatment shall be limited to those aquatic species and to those purposes for which approval was granted. Treatment shall be used only as necessary, and only as directed on the product label. The water shall be diluted, held for a specific time, or neutralized prior to discharge as directed on the product label or as necessary to comply with Chapter 307 of this title (relating to Texas Surface Water Quality Standards) or as needed to be below the concentration level used for a long-term static treatment, whichever is the lowest concentration.]

[(4) Exemption from the requirements of paragraph (3) of this subsection may be approved on a case-by-case basis by the executive director to allow for Investigational New Animal Drug permits from the FDA.]

[(c) Facilities regulated under this rule are authorized to discharge wastewater in accordance with the following limitations and monitoring requirements.]

[Figure: 30 TAC §321.277(c)]

<u>Parameter</u>	<u>Limitation</u>	<u>Sample Type</u>	<u>Monitoring Frequency</u>
Flow (MGD)	N/A	Estimate	1/day*
Total Suspended Solids	N/A	Grab	1/month*
Volatile Suspended Solids	N/A	Grab	1/month*
Total Residual Chlorine	4 mg/l	Grab	1/day**
pH	6.0 - 9.0 S.U.	Grab	1/day***
Dissolved Oxygen	2 mg/l	Grab or in-situ	1/2weeks*

[*When discharge occurs. Daily average and daily maximum flow shall be reported. Total suspended solids and volatile suspended solids shall each be reported as a daily maximum concentration. Oxygen monitoring may be conducted on a grab sample or of the effluent directly (in-situ) and reported as the daily minimum.]

[**When discharge occurs. Monitoring for total residual chlorine is required only following the use of chlorine.]

[***When discharge occurs. Monitoring is required only following the use of lime. The effluent quality shall be adjusted prior to discharge to be within the allowable limitation. Units are standard units (S.U.)]

[(1) Unless otherwise specified in this rule, sampling and laboratory test methods shall comply with procedures specified in §319.11 of this title (relating to Sampling and Laboratory Testing Methods).]

[(2) Results of monitoring of each constituent specified in this section shall be reported by the registrant to the commission's Agriculture and Watershed Management Division, on the Aquaculture Production Facilities Report form approved by the executive director. Monitoring results shall be reported to the executive director in accordance with the following schedule.]

[Figure: 30 TAC §321.277(c)(2)]

Monitoring Period

Report Due Date

January, February, March	April 30th
April, May, June	July 31st
July, August, September	October 31st
October, November, December	January 31st

[(3) Annual production for the period of January-December shall be reported by the registrant to the commission's Agriculture and Watershed Management Division, on the Aquaculture Production Facilities Report form which is due each January 31st, in accordance with paragraph (2) of this subsection.]

[(4) The registrant shall maintain results of monitoring of each constituent specified in this section or the equivalent information shall be maintained for a minimum of three years and shall make these results readily available for review upon request.]

[\$321.278. General Requirements.]

[(a) There shall be no discharge of floating solids, no discharge of visible oil, nor shall the discharge cause any nuisance conditions affecting the public along the discharge route.]

[(b) The discharge shall not exhibit foaming of a persistent nature.]

[(c) Sweeping or intentional flushing of accumulated solids from raceways and fabricated tanks with discharge to waters in the state is prohibited unless this volume is routed to and contained within a

separate detainment structure a minimum 48 hours prior to discharge to allow settling of solids and associated pollutants.]

[(d) Dewatering of ponds should be accomplished by discharge of the uppermost portion of the water column to avoid discharge of disturbed bottom sediments.]

[(e) Chlorine disinfection wastewater and other cleaning wastewaters should be discharged to a POTW when possible.]

[(f) Records of all drugs, medications, and chemicals utilized for treatment shall be maintained on a monthly basis at the facility or shall be readily available for inspection by authorized representatives of the executive director for at least three years. Records shall include treatment concentrations, discharge concentrations, discharge volumes and dates, and a product label, or Material Safety Data Sheet (MSDS) for each drug, medication, or chemical utilized.]

[(g) Any registrant engaged in the propagation and/or rearing of shrimp which suffer mortalities due to apparent disease shall have the cause of mortality diagnosed by a pathologist as soon as is practicable. The TNRCC shall be immediately notified of the diagnosis. Any actions which are deemed as necessary by the registrant to prevent transmission of the disease to aquatic life endemic to waters in the state shall be implemented as soon as is possible. The executive director may additionally require cessation of the discharge of effluent from infected portions of the facility as is necessary to protect aquatic life in the receiving stream from potential adverse effects.]

[(h) The reuse of pond wastewater should occur to the maximum extent possible. Pond wastewater shall be recirculated or reused wherever appropriate and cost effective.]

[(i) The discharge of domestic sewage into or adjacent to waters in the state is not authorized by this subchapter. All domestic sewage shall be either discharged pursuant to an individual permit issued by the commission; routed to an authorized and adequately designed on-site sewage facility, POTW; or transported to an approved off-site disposal facility.]

[(j) Aquaculture production facilities shall be operated in such a manner as to prevent the creation of a nuisance or a condition of air pollution as mandated by Chapters 341 and 382 of the Texas Health and Safety Code.]

[(k) Dead aquatic species shall be routinely removed from ponds and properly disposed of as is required to prevent contamination of waters in the state and to prevent a nuisance or public health hazard.]

[(l) All discharges from aquaculture production facilities shall comply with §319.22 of this title (relating to Quality Levels--Inland Waters) or shall comply with §319.23 of this title (relating to Quality Levels--Tidal Waters).]

[(m) The facility shall take all steps necessary to prevent any adverse effects upon human health or safety, or to the environment. The registrant of any facility authorized under this subchapter shall

report any noncompliance with the requirements of this subchapter (including any unauthorized discharges or overflows) which may endanger human health or safety or the environment. Report of such information shall be provided orally to the commission's regional office within 24 hours of becoming aware of the noncompliance. A written submission of such information shall also be provided to the commission's regional office and to the commission's Austin office, Water Enforcement Section, P.O. Box 13087 (MC-149), Austin, Texas 78711-3087, within five working 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.]

[§321.279. Enforcement and Revocation, Suspension, or Annulment.]

[(a) Enforcement action. If any registrant or facility regulated by this subchapter fails to comply with the terms of this subchapter, the executive director may take enforcement action as provided by Texas Water Code, §26.136 and in accordance with commission rules relating to enforcement actions.]

[(b) Revocation or suspension of a registration. A registration of the commission does not become a vested right and may be suspended or revoked at any time by order of the commission after opportunity for a public hearing is given. Any person who has obtained a registration under this subchapter is subject to the revocation and suspension procedures set forth in §§305.66, 305.67 and 305.68 of this title (relating

to Permit Denial, Suspension, and Revocation; Revocation and Suspension upon Request or Consent; and Action and Notice on Petition for Revocation or Suspension).]

[(c) Annulment of registration. The executive director may annul any registration for those facilities that did not meet, at the time the application was filed, the conditions necessary to invoke the executive director's authority to grant them a registration. The executive director shall give notice by personal service or by registered or certified mail to the registration holder of facts or conduct alleged to warrant the intended action. The registration holder shall have an opportunity to show compliance with all requirements of law for the retention of the registration by providing such showing within 30 days of the date the executive director's letter was mailed. Within 30 days of receiving the registrant's response, the executive director shall send a letter containing the decision on the annulment delivered by personal service or by registered or certified mail to the registrant. The registrant is required to cease activities under the registration within ten days of the date that the executive director's decision letter was mailed. If the registrant wishes to appeal the decision, the procedures regarding appeals set forth in §321.272 of this title (relating to Purpose and Applicability) apply.]

[§321.280. Annual Waste Treatment Fee.]

[(a) In accordance with §§305.501-305.507 of this title (relating to Waste Treatment Inspection Fee Program), registrants authorized to discharge wastes to surface waters from aquaculture production facilities under the requirements of this subchapter shall remit to the commission an annual waste treatment fee.]

[(b) The fee, assessed annually, shall be in accordance with the following fee rate schedule:]

[(1) for any active facility, the fee shall be \$500, as determined by either the information specified on the application for registration or on the Aquaculture Production Facilities Report forms submitted during the calendar year;]

[(2) for any inactive facility, the fee shall be \$250; and]

[(3) any increased assessment above the amounts in paragraphs (1) or (2) of this subsection shall be in accordance with regulations adopted by the commission.]