The Texas Natural Resource Conservation Commission (Commission) proposes amendments to §§321.31-321.46, concerning the updating of technical requirements and simplifying administrative procedures related to authorizations of concentrated animal feeding operations (CAFOs).

At the same time as these amendments to this subchapter are being proposed, the commission is proposing the issuance of a general permit for CAFOs in accordance with the amended provisions of §26.040 of the Texas Water Code (75th Legislative Session, 1997). A general permit is not required to adopted by rule. Rather, a general permit may be issued, amended, revoked, renewed or canceled as provided by §26.040 of the Texas Water Code. Additionally, §26.040 provides specific procedural requirements for the issuance of a general permit, including special notice, comment and public hearing provisions. The commission has made the preliminary findings required by §26.040(a) that this category of discharges meets the requirements necessary to qualify for a general permit. Such preliminary findings are discussed in more detail in the Notice of a Proposed General Permit published concurrently with this rulemaking. The proposed general permit will provide a medium for authorization for CAFOs that discharge not more than 500,000 gallons into surface water in any twenty-four hour period, if operated in accordance with the provisions of the general permit. The amended provisions of this subchapter will provide alternate means for authorization for all CAFOs, including those that cannot gain coverage under the proposed general permit.

The purpose of the proposed rules is to create, together with the proposed general permit, a variety of vehicles available for the regulation and authorization of air emissions and water discharges by CAFOs, tailored according to regulatory needs including the sizes and natures of the facilities and their discharges, statutory requirements, and the necessary administrative burdens both on the commission and on the

dischargers. As amended, this subchapter will offer or require, as appropriate, authorization by individual permit or by registration under a permit by rule. In combination with the general permit, these regulatory options will provide a full spectrum of options for the commission to regulate CAFOs by suitable and efficient means.

The commission has taken into consideration the following state and federal actions in proposing these amendments to Subchapter B:

1) Senate Bill 2, 72nd Texas Legislature, First Called Session (1991): Consolidation of the Texas Air Control Board, Texas Water Well Drillers Board, Texas Board of Irrigators, Texas Water Commission and selected programs from the Texas Health Department into the Texas Natural Resource Conservation Commission with the express purpose and instruction that the new TNRCC streamline permit procedures and promote more comprehensive and more expeditious review of proposed facilities.

2) Senate Bill 503, 73rd Texas Legislature (1993), that allows the Texas State Soil and Water Conservation Board to assist small agricultural and silvicultrual facilities in meeting water quality requirements in the state through financial assistance and the development of certified water quality management plans.

3) EPA Region VI General Permit for CAFOs (March, 1993), which establishes technical and procedural requirements substantially identical to those contained in these proposed

amendments for CAFOs to meet in order to receive federal authorization to discharge under the National Pollutant Discharge Elimination System (NPDES).

4) Section 26.040 of the Texas Water Code, under which Subchapter B was originally adopted and which directed that the commission may by rule regulate and set requirements and conditions for discharges of waste whenever the commission determines that requiring individual permits is unnecessarily burdensome both to the waste discharger and to the commission.

5) House Bill 1542, 75th Texas Legislature (1997), which amended §26.040 of the Texas Water Code to allow the TNRCC to authorize the discharge of wastewaters through the issuance of general permits. Discharges under such general permits are limited to no more than 500,000 gallons in a 24-hour period. This bill further specifies that all current rules adopted by the TNRCC under §26.040 as it read prior to the effective date of the HB 1542 should remain in effect, as they may be amended by the commission from time to time as appropriate, and provides that the commission's authority for subsequent amendments or modifications is not affected by the changes made by the bill.

6) The General Appropriation Acts of 73rd, 74th and 75th Sessions of the Texas Legislature which have limited the number of employees and funds allocated to the various programs of the TNRCC.

Under this proposal to amend Subchapter B, the commission is considering a change to the existing technical and procedural requirements for some CAFOs. The permitting procedure as it operates under current Subchapter B requires the agency to invest significant resources and manpower performing repetitive technical reviews and evaluations in order to develop individual draft permits for all CAFOs, even though federal and state experience establishes that permits for most CAFO facilities should contain basically uniform technical requirements. The agency has been criticized by applicants, local economic development organizations, agricultural commodity groups, local chambers of commerce, and legislators for taking too long to process applications under the existing Subchapter B process. Such criticism indicated that the long timeframe for processing applications under existing Subchapter B, and the differing technical requirements from the existing EPA Region VI general permit, were combining to force potential CAFO facilities to locate in other states, depriving our state of economic development opportunities.

The TNRCC as well as other state agencies has been required through the appropriations process in the last several legislative sessions to reduce the number of their employees and overall costs of conducting their various programs.

Since its consolidation in 1993, the TNRCC has continued to evaluate its programs to find ways to reduce its overall human resources costs and associated expenses, while providing for the continued protection of the quality of the state's resources under its jurisdiction. The commission identified CAFOs as one of the number of types of facilities for which it is appropriate to modify the commission's authorization procedure from entirely a individual permitting process to one that at least partly utilizes permits-by-rule,

so as to provide a performance-based system with a less time-consuming and labor-intensive administrative process while maintaining a high level of protection for the environment.

It would clearly lead to a backlog of such permitting actions, similar to occurrences before the implementation of permits by rule through the former Subchapter K. The commission believes its resources would be better spent conducting individual permitting actions for those facilities that regularly discharge waste into surface waters, and thereby have a greater potential for pollution, while regulating by uniform rule or permit most facilities that are not allowed to discharge into a stream or water body unless there is a rainfall greater than a 25-year, 24-hour event. Such action is consistent with the provisions and philosophy of the EPA Region VI General Permit for CAFOs. The proposed amendments to Subchapter B and the concurrent proposed general permit provide for a process of gaining authorization similar in nature and structure to that used by EPA Region VI. They also bring the technical requirements of the state program up to the those of the federal program, allowing the CAFOs in the state to achieve a single set of standards and providing the basis for the state to quickly and efficiently assume administration of the NPDES CAFO program upon authorization of the program from EPA.

In addition to the existing provisions of Subchapter B, an applicant wanting to construct a new CAFO facility or amend or renew an authorization for an existing facility must also obtain a separate air quality authorization from the Commission through a separate and distinct process under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification). The proposed amendments to Subchapter B and the concurrent proposed general permit are consistent with the provisions of the EPA Region VI General Permit for CAFOs and go even further by providing additional

requirements which address the commission's concerns and responsibilities for protection of both groundwater resources and air quality.

As indicated in previous paragraphs, under current rules CAFOs are required to seek authorizations under two separate processes at the TNRCC. The proposed amendments to Subchapter B and the concurrent proposed general permit provide for a process where a CAFOs will gain coverage or authorization fully protective of both air and water quality through a single process. This will give TNRCC the ability to combine processes and save limited resources and manpower. Amendments to Subchapter B are being proposed, in part, to replace the judicially nullified Subchapter K and to make state (commission) requirements for new facilities consistent with existing federal (Environmental Protection Agency or "EPA") requirements contained in 40 CFR Part 122, relating to concentrated animal feeding operations. In addition to providing more consistency with federal requirements, the proposed amendments to this subchapter would enable the commission to regulate these facilities in a manner that conserves scarce resources, and will relieve burdens on the commission and the CAFOs by consolidating air and water quality authorization requirements into a single process.

Proposed amendments to Subchapter B would allow a CAFO to obtain an air quality standard permit through the procedures identified in this amended subchapter, regardless of whether its water quality authorization takes the form of an individual permit, registration under the permit by rule or coverage under the general permit. This standard permit would satisfy the Texas Clean Air Act requirements so that a separate air quality authorization would not be necessary. The air quality requirements of this subchapter reflect the application of best available control technology for CAFOs, and address the protection of air quality through the implementation of goodhousekeeping practices. If an applicant

cannot meet the air quality criteria of this amended subchapter, or if the CAFO is a major source or major modification as defined in Chapter 116 of this title, then a separate air quality permit will be required.

The amended registration or permit by rule is intended to relieve the commission of the unproductive burden of processing individual permit applications for those CAFOs that either do not qualify for, or choose not to be, covered by the proposed general permit, but are nevertheless appropriately regulated if they comply with the requirements of the permit by rule. These amendments also preserve the commission's flexibility to require any facility to apply for and obtain an individual permit, for any reason that within the commission's judgment makes it necessary or appropriate that they do so. In this way, the commission will be able to use its resources efficiently to concentrate individual attention more directly where it is needed. This type of efficiency is possible in the regulation of CAFOs because, as reflected both in the proposed general permit and in this proposed permit by rule, most CAFOs, if designed and operated properly in conformity with uniform standards, will avoid discharging into surface water except under exceptional circumstances. Those that fall outside of that group will still receive individually tailored permits and provisions.

For registrations, these amendments would adopt a public participation procedure similar to that the commission uses for registrations under Chapter 312 of this title, (relating to Sludge Use, Disposal and Transportation). These include notice of technically complete applications both published in the locality of the proposed operation and mailed to potentially affected landowners and other interested persons and governmental authorities, opportunity for public comment, consideration by the executive director of such comment timely received, and procedures for commenters or the applicant to ask the commission for reconsideration of the executive director's action on a registration application. For those who have

exhausted their administrative remedies and otherwise have standing, there is then the ability to appeal the commission's final decision to state district court under Texas Water Code §5.351. Thus, these amendments would provide for full public notice, scrutiny and input, as well as commission and judicial review, while reserving for those cases where an individual permit is appropriate the full contested case hearing provided for under §26.028 of the Water Code. Mindful that even the most simple contested case hearing costs the agency several thousand dollars in staff time alone, the commission proposes these amendments, in part, as a way to devote such resources only to those cases where circumstances make an individual permit necessary for effective regulation.

EXPLANATION OF PROPOSED RULE

Proposed changes to §321.31, Waste and Wastewater Discharge and Air Emission Limitations, provides the general restrictions or limitations to the discharge of wastewater from a CAFO. These limitations are consistent with existing federal requirements for CAFOs. The proposed changes also provides that facilities must be operated in such a manner as to prevent a public health nuisance or a condition of air pollution as provided by Texas Health and Safety Code, Chapters 341 and 382.

Proposed changes to §321.32, Definitions, reflects a significant number of additional terms being defined, a small number being deleted and a few existing definitions being modified to reflect the consistency between state and federal programs.

Proposed changes to §321.33, Applicability, provide that any existing feedlot holding an individual permit issued either under Subchapter B or under other authority prior to the effective date of these amendments shall continue to be regulated under such individual permit. It also provides that any animal

feeding operation may be required by the executive director to file an application to obtain an individual permit under circumstances identified in this amended section. Any CAFO which does not gain coverage under the proposed CAFO general permit or does not hold an existing individual permit must file an application for registration in accordance with the provisions of §321.35 of this title, (relating to Procedures for Making Application for Registration). CAFOs in the Dairy Outreach Program Areas having greater than or equal to 300 animal units but less than 1000 animal units are required to file an application for registration under this subchapter and meet the education requirements of §321.41 of this title, (relating to Other Requirements). Any CAFOs which are not required to file an application for registration or an individual permit under the provisions of this subchapter shall comply with all the requirements under §§321.38-321.42 of this title, (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements).

This amended section also prohibits new facilities on the Edward's Aquifer recharge zone.

The proposed changes would also allow certain CAFOs to obtain an air quality standard permit authorization by meeting air quality criteria contained in this amended subchapter. Qualification for the air quality standard permit authorization would be determined in the consolidated review and authorization process provided by §321.34, Procedures for Making Application for an Individual Permit or §321.35, Procedures for Making Application for Registration. However, certain CAFO's are prohibited from using the standard permit authorization and must obtain a separate air quality permit. Any CAFO which cannot meet the air quality criteria in this amended subchapter must obtain a separate air quality authorization under Chapter 116 of this title. Any CAFO which is a new major source or major

modification as defined in Chapter 116 of this title must obtain an air quality permit under Chapter 116 of this title. Additionally, animal feeding operations that are not required to obtain a CAFO permit under this amended subchapter may be required to obtain air quality authorization under Chapter 116 of this title (certain operations may qualify for an exemption from air quality permitting requirements). Finally, the commission is investigating whether CAFOs of a particular size or greater would present nuisance odor problems that would require individual analysis or special conditions beyond those provided under the air quality standard permit or the provisions of the proposed amendment to this subchapter. Therefore the commission invites the public and regulated community to comment on these issues.

Regardless of any authorization granted pursuant to this amended subchapter, CAFOs must comply with any applicable federal air quality regulations including, but not limited to, National Emission Standards for Hazardous Air Pollutants ("NESHAPs") or New Source Performance Standards ("NSPS"). Additionally, any CAFO that constitutes a major source as defined in Chapter 122 of this title must obtain a federal operating permit under that chapter.

The proposed changes would also exempt from this amended subchapter any existing CAFO which is operating under a certified water quality management plan or any facility which qualifies and obtains such a plan from the Texas State Soil and Water Conservation Board, unless the CAFO or facility is referred by the Board to the commission for non-compliance pursuant to Texas Agriculture Code §201.026.

Finally, the proposed changes to this section would provide that by written request of the owner/operator a facility currently authorized by an individual permit may request a transfer of authorization from an

individual permit to coverage under an application for registration. However, such request and application would be processed in accordance with the provisions of §321.35 of this title, (relating to Procedures for Making Application for Registration).

Proposed changes to §321.34, Procedures for Making Application for an Individual Permit, provides application content requirements and associated fees. Applications filed under this section will be processed in accordance with the applicable provisions of Chapter 305 of this title (relating to Consolidated Permits), unless specified otherwise in this amended section. It also provides that individual permits issued under this amended subchapter shall not exceed a term of five years, unless stated otherwise in the permit or extended by order of the commission. Finally, it provides that new CAFOs must provide, at the time of the initial application a minimum air quality buffer of one-quarter mile from any occupied residence or business structure, school, church, or public park unless the owner of such affected property provides written consent, in order to qualify for consolidated air quality standard permit and a water quality permit.

In accordance with Texas Water Code §26.028(e), the proposed amendment to §321.34, Procedure for Making Application for an Individual Permit, provides that an application to renew a permit for a confined animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be renewed by the commission at a regular meeting without holding a public hearing if the applicant does not seek to discharge into or adjacent to waters in the state and does not seek to change materially the pattern or place of disposal.

In addition, the proposed changes to this section provide that an application for renewal of an individual permit must be filed not later than the 180th day prior to the date the permit is to expire. It also provides required content requirements and associated fees. Finally, an application for renewal for an individual permit may be granted without a public notice if no change to the facility is being proposed and no formal major enforcement action has been brought against the facility during the previous 36-month period. In order to qualify for the renewal process identified in the previous sentence and in addition to the provisions described in this paragraph, any application for renewal of an individual permit within a Dairy Outreach Program Area, an annual compliance inspection will have to have been completed within 12 months of the date the executive director processes the application for permit renewal. Any application for renewal of an individual permit failing to meet the above provisions will be processed as if it was a new application in accordance with the procedures specified in this amended section.

Proposed changes to §321.35, Procedures for Making Application for Registration, provides application content requirements and associated fees. It also provides that registrations authorized under this amended subchapter shall not exceed a term of five years, unless extended by order of the commission. Finally, it provides that new CAFOs must provide, at the time of the initial application a minimum air quality buffer of one-half mile from any occupied residence or business structure, school, church, or public park unless the owner of such affected property provides written consent, in order to qualify for consolidated air quality and water quality authorization. In these proposed amendments, the commission is proposing up to a one-half mile air quality buffer and a provision which requires an applicant to develop and implement a plan to abate odors and control air contaminants. The commission will consider these additional requirements, any similar options, alternatives or possible reductions to these

requirements that are proposed through the public comment and public hearing process and solicits public comments thereto.

In addition, the proposed changes to this section provide that an application for renewal of a registration must be filed not later than the 180th day prior to the date the authorization is to expire. It also provides required content requirements and associated fees for the renewal process. Finally, an application for renewal of a registration may be granted without a public notice if no change to the facility is being proposed and no formal major enforcement action has been brought against the facility during the previous 36-month period. In order to qualify for the renewal process identified in the previous sentence and in addition to the provisions described in this paragraph, any application for renewal of an existing registration within a Dairy Outreach Program Area, an annual compliance inspection will have to have been completed within 12 months of the date the executive director processes the application for renewal. Any application for renewal of a registration failing to meet the above provisions will be processed as if it was a new application in accordance with the procedures specified in this amended section.

Proposed changes to §321.36, Notice of Application for Registration, applications for registration must be reviewed by the executive director for administrative and technical completeness within 30 working days of receipt of the application. If the application is not complete, the executive director must notify the applicant within this review period and allow the applicant a maximum 30-day period to provide the necessary information. If the applicant does not timely submit such information, the application shall be returned.

In addition, proposed amendments to this section, provide notice content requirements, a 30-day public comment period, published notice in a local newspaper, and mailed notice to affected persons including adjoining landowners, county judges, river authorities in the Dairy Outreach Program Areas, and where applicable, ground water districts. These provisions are consistent with those applicable to other types of applications provided by Chapter 305 of this title.

Proposed changes to §321.37, Action on Applications for Registration, provides that the public may provide comments to the executive director on applications for registration which are received within 30 days of the mailed notice. Comments will be considered by the executive director in determining what action to take on the application. In addition, the executive director shall determine whether to grant or deny the application, in whole or in part, deny with prejudice, suspend an activity or modify a proposed activity requested by the applicant. Further, the amendments to this section require the executive director to provide a copy of the determination in writing to the applicant and any persons submitting written information on the application. Finally, this amended section provides that any affected persons submitting written comments or the applicant may file a motion with the chief clerk in accordance with §50.39(b)-(f) of this title (relating to Motions for Reconsideration) requesting the commission to reconsider the final determination of the executive director.

Proposed changes to §321.38, Proper CAFO Operation and Maintenance, requires the owner/operator of any CAFO authorized by this amended subchapter to implement and document all best management practices provided by amended §321.40 of this title as well as other necessary measures contained in the facility's pollution prevention plan as provided by proposed amendments to §321.39 of this title or a

Natural Resources Conservation Service (NRCS) plan, as applicable. Copies of such records and plans shall be provided to the executive director upon request.

Proposed changes to §321.39, Pollution Prevention Plans, requires each facility, authorized under this amended subchapter, to develop and implement a Pollution Prevention Plan (PPP) providing pollution prevention and abatement measures as specified in the rule. Provisions contained in a NRCS plan may be substituted or referenced for those in the PPP.

Proposed changes to§321.40, Best Management Practices, provides a list of best management practices that must be utilized by all CAFOs authorized under this amended subchapter, where reasonable and appropriate, and based upon existing physical conditions. Where provisions in a NRCS plan are equivalent or more protective than those provided by this amended section, such provisions may be used in lieu of corresponding BMPs in this section.

In accordance with §26.048 of the Texas Water Code, a CAFO authorized to discharge agricultural waste into a playa or to use a playa as a wastewater retention facility for agricultural waste before the adoption of these rules may continue such discharge provided water samples from wells at the site are tested for chlorides and nitrates. If the test results indicate a significant increase in the levels of these contaminants, the commission shall investigate the cause and require necessary corrective action.

Proposed changes to §321.41, Other Requirements, provides additional conditions on any authorization or individual permit granted under this amended subchapter including those relating to education and training (Dairy Outreach Program Areas only), inspections and recordkeeping, internal reporting

procedures, and visual and site inspections. Any owners/operators of CAFOs with greater than or equal to 300 animal units in the Dairy Outreach Program Areas and covered by the provisions of this amended subchapter are required to obtain authorization under this amended subchapter and do the following: 1) within 12 months of coming under the provisions of this amended subchapter, complete an eight hour course in animal waste management; and 2) complete an additional eight hours of continuing animal waste management education within each 24 month period of the initial course.

Proposed changes to §321.42, Monitoring and Reporting Requirements, requires an owner or operator of any facility authorized under this amended subchapter to report to the executive director any discharge from the CAFO to waters or adjacent to waters in the state. Such report must be done orally within 24 hours and in writing within five working days of the discharge. These provisions are consistent with those contained in Chapter 305 of this title. In addition, the proposed changes provide what types of data and information shall be maintained on-site and/ or submitted to the executive director.

Proposed changes to §321.43, Notification, requires all new animal feeding operations which plan or propose to confine 300 animal units or 300 head of any species not specifically listed under the definition of a CAFO in this amended subchapter to notify the executive director of the location and size of their operation. No fees will be imposed as the result of this notification. Any facilities which have no potential to discharge into waters in the state are not required to notify the executive director.

Proposed changes to §321.44, Dairy Outreach Program Areas, describes those counties in the state which are involved in the 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. Such

areas must be delineated by rule. This section of the rules shall be reviewed by the commission on at least a triennial basis to determine whether counties should be added or deleted from designation.

Proposed changes to §321.45, Effect of Conflict or Invalidity of Rule, contains a standard severability clause providing that the invalidity of any one provision shall not affect the validity of any of the remaining provisions. Additionally, to the extent of any irreconcilable conflict between the provisions of this amended subchapter and those outside the subchapter, the former shall control.

Proposed changes to §321.46, Air Standard Permit Authorization for a CAFO General Permit provides that a facility that locates and is managed in compliance with an authorization under a CAFO general permit obtained in accordance with the notice of intent requirements of the general permit is entitled to an air quality standard permit rather than apply for a separate air quality permit.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effects on state government will be an estimated decrease in revenue of approximately $1,500 in permit fees for each facility eligible for a consolidated permit under these rules. Due to the relatively small number of facilities potentially affected and the availability of fund balances in the affected accounts, these reductions are not anticipated to adversely affect the commission's ability to meet workload demands under existing budget authority. There are no effects anticipated for local governments.

The amended rule as proposed will increase costs of engineering and certification of waste management facilities at affected livestock and poultry operations. Most of these costs are also required for compliance with the federal EPA general permit for concentrated animal feeding operations and are not completely attributed to the amendments as proposed here. These costs will vary on a case-by-case basis with the size, location and type of affected facility, but are anticipated to average approximately $2,000 for most operations. Because the proposed authorizations would be a consolidated permit, affected operators will also realize a cost savings due to the elimination of requirements associated with application for separate water quality and air quality authorizations. These cost savings cannot be determined exactly, but are anticipated to mitigate to some extent the potential cost increases attributed to additional engineering and certification requirements. For new facilities, additional costs will be related to the proposed one-half mile distance limitation for the facility location relative to certain existing development. This proposed requirement will not affect existing facilities, but will potentially increase the site acquisition and development costs of new facilities. Cost estimates will vary on a case-by-case basis with the size, location and description of a proposed facility and will be dependent on existing land uses, property costs and site configurations. Additional costs may also be related to any proposals to require additional nuisance odor abatement provisions for certain facilities beyond those contained in existing air quality standard permits or proposed amendments to these sections. Public comment on such proposals is requested in this rulemaking, but no specific requirements are included in these proposed amendments and no cost estimates have been developed. For all affected facilities collectively, the total costs are estimated to approach or exceed the total savings; however, the net affect on any individual operator cannot be determined exactly. Affected operators may be defined as small businesses and the fiscal implications identified will vary for these businesses on a case-by-case basis.

PUBLIC BENEFIT

Mr. Minick has also determined that for each of the first five years these amended sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be: simplification and more cost-effective administration of the permitting program for concentrated animal feeding operations, increased focus of water quality protection efforts on more critical areas of potential degradation, more comprehensive management of both air and water quality issues, and enhanced coordination of state and federal water quality control programs. There are no fiscal effects anticipated for any person required to comply with the sections as proposed except as identified above.

REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirement of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

TAKINGS IMPACT ANALYSIS

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment.

The specific purpose of the proposed amendments is to create, together with the proposed general permit, a variety of vehicles available for the regulation and authorization of air emissions and wastewater discharges by CAFOs, tailored according to regulatory needs including the sizes and natures of the facilities and their dischargers, statutory requirements and the burdens both on the commission and on the

discharges. Promulgation and enforcement of these proposed amendments will not affect private real property which is the subject of the rules.

PUBLIC HEARING

A public hearing on the proposal will be held April 7, 1998 at 2:00 p.m. in Room 201S of the Commission Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured to receive oral or written comments by interested persons. Individuals may present oral statements, when called upon, in the order of registration. Open discussion will not occur during the hearing; however, a commission staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

PUBLIC COMMENTS

Written comments on the proposal should refer to Rule Log No. 97152-321-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., April 13, 1998. For further information concerning this proposal, please contact Darrell Williams, Texas Natural Resource Conservation Commission, Water Quality Division, (512) 239-5768.

COASTAL MANAGEMENT PLAN

Under 31 TAC §505.11 permits for a new CAFO within one mile of a coastal natural resource area (CNRA) must be consistent with the applicable goals and polices of the CMP contained in Chapter 501,

Subchapter B of Title 31. These proposed rules would specifically require CAFOs within one mile of a CNRA to obtain an individual permit for the specific purpose of ensuring consistency with applicable CMP goals and policies.

Preliminary Consistency Determination: The commission has preformed a preliminary consistency determination for the proposed rules pursuant to 31 TAC §505.22 and has found the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. CMP goals applicable to the proposed rule include the protection, restoration and enhancement of the diversity, quality, quantity, functions and values of Coastal Natural Resource Areas (CNRA) and to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone. CMP policies applicable to the proposed rule include the following: 1) discharges shall comply with water- quality-based effluent limits; 2) discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development; and 3) to the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because any new proposed CAFO located within one mile of a CNRA will be required to pursue an individual permit which will allow the commission to consider the effects of such a facility on the CNRA, establish effluent limits, if necessary, on any discharges from the proposed facility to maintain applicable water quality standards and allow opportunity for notice, public comment and public hearing .

Request for Public Comment: The commission seeks public comment on the consistency of the proposed rule amendment.

STATUTORY AUTHORITY

These amendments are proposed under the Texas Water Code, §5.102, which provides the commission with the authority to carry out duties and general powers of the commission under its jurisdictional authority as provided by Texas Water Code §5.103. These amendments are also proposed under §26.028(c), 26.040 and 26.041 of the Texas Water Code and §382.017 of the Texas Health and Safety Code.

There are no other codes, statutes, or rules that will be affected by this proposal.

SUBCHAPTER B : CONCENTRATED ANIMAL FEEDING

[LIVESTOCK AND POULTRY PRODUCTION] OPERATIONS

§§321.31-321.46

§321.31. Waste and Wastewater Discharge and Air Emission Limitations [Statement of No Discharge Policy].

(a) It is the policy of the Texas Natural Resource Conservation [Water] Commission that there shall be no discharge or disposal of waste and/or wastewater from [concentrated] animal feeding operations into or adjacent to [the] waters in the state, except in accordance with subsection (b) of this section, any individual permits issued under this subchapter prior to the effective date of these rules, any CAFO general permits, or §305.1 of this title (relating to Scope and Applicability) [but rather that these materials shall be retained and utilized or disposed of on agricultural land]. 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, registrations, authorizations, CAFO general permits or individual permits.

(b) Wastewater 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 §321.39 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 Texas Health and Safety Code, Chapters 341 and 382.

§321.32. 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.

[**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 or 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.]

[**Average daily basis** - The arithmetic mean for the number of animals in a feedlot operation during any period of 90 consecutive days (e.g. the total number of animals on the premises added daily for a 90 consecutive day period divided by 90).]

(6) 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.

(7) CAFO general permit - A general permit issued by the commission in accordance with Texas Water Code, §26.040 for the express purpose to regulate discharges from concentrated animal feeding operations on a statewide or geographic basis.

(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) 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) 1000 slaughter or feeder cattle;

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

(iii) 2500 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;

(ix) 5000 ducks; or

(x) 1000 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) 3000 sheep;

(vi) 16,000 turkeys;

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

(viii) 9000 laying hens or broilers when facility has a liquid waste handling system;

(ix) 1500 ducks; or

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

(C) 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.

(10) 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.

(11) Dairy Outreach Program Areas - The areas include all of the following counties: Erath, Bosque, Hamilton, Comanche, Johnson, Hopkins, Wood and Rains.

(12) Edwards Aquifer - That portion of an arcuate belt of porous, waterbearing predominantly carbonate rocks known as the Edwards (Balcones Fault Zone) Aquifer [limestones composed of the Comanche Peak, Edwards, and Georgetown formations] trending from west to east to northeast in [through] Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devils River Limestone, Person Formation, Kainer Formation, Edwards Group 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 [(See Chapter 313 of this title relating to Edwards Aquifer)].

(13) 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 delineated as such on official maps located in the appropriate regional office and groundwater conservation districts.

(14) Feedlot [/concentrated animal feeding operation] - A concentrated, confined livestock or poultry facility operated for meat, milk or egg production, growing, stabling, or housing, in pens or houses wherein livestock or poultry are fed at the place of confinement and crop or forage growth or production of feed is not sustained in the area of confinement.

(15) Flushwater waste handling system - A system in which freshwater or [clarified] wastewater is recycled or used [for use] in transporting waste.

[**Free stall barn** - Specialized buildings wherein producing livestock are permitted free movement between resting and feeding areas.]

(16) 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.

[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, as these terms are commonly used in the agriculture industry.]

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

(18) Lagoon - An earthen structure for the biological treatment for 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.

(19) 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.

(20) 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.

[**Milking center** - A separate milking area with milk storage and cooling facility adjacent to a free stall barn or cowyard dairy operation.]

[**Milkroom** - Milk storage and cooling rooms normally used for stall barn dairies.]

(21) Natural Resources Conservation Service ("NRCS") - An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service ("SCS").

(22) New concentrated animal feeding operation - A concentrated animal feeding operation which was not authorized either under this subchapter as of the effective date of these rules or under an individual permit issued by the commission prior to the original adoption of this subchapter.

(23) 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 [feedlot], except for overflows which result from chronic or catastrophic rainfall events [greater than the 25-year, 24-hour maximum rainfall event].

(24) 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.

(25) Open lot - Pens or similar confinement areas with dirt, 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 [yard, pasture lot,] dirt lot, or [and] dry lot, for livestock or poultry, as these terms are commonly used in the agricultural industry.

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

(27) 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.

(28) Permittee - Any person issued an individual permit or granted authorization under [whose feedlot operation is subject to] the [permit] requirements of this subchapter.

(29) 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.

(30) Process generated 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). [Water directly or indirectly resulting from a feedlot operation for any or all of the following:]

[(A) spillage or overflow from animal or poultry watering systems;]

[(B) washing, cleaning or flushing pens, barns, manure pits or other feedlot facilities;]

[(C) direct contact swimming, washing or spray cooling of animals;]

[(D) dust control; and]

[(E) any other use in which water may contact animals, or wastes produced from feedlot operations or facilities].

(31) 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.

(32) Recharge feature [zone] - Those natural or artificial features either on or beneath the ground surface at the site under evaluation where, due to artificial means or surface and/or geologic features, a significant pathway 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; fractured or karstified limestone or similar type formation that crops out on the surface, especially near a water course; excavations or active, abandoned, or dry wells. [Generally, that area where the Edwards and associated limestones crop out in Kinney, Uvalde, Medina, Bexar, Comal, Hays, 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.)]

(33) 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.

[Stall barn - Specialized buildings wherein producing cows and replacement cows are milked and fed in a fixed location.]

(34) 25-Year, 24-Hour rainfall event/25-Year 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. [(Note: Refer to Exhibit 1 of §321.41 of this title (relating to Appendix A) to obtain an appropriate value for the 25-year rainfall event.)]

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

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

(37) 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.

(38) Well - A water well, injection well, dewatering well, monitoring well, oil well, gas well, recharge well, exploratory hole, test hole or other artificial penetration into the ground surface.

§321.33. Applicability.

(a) Any existing feedlot as defined and authorized under this subchapter on the effective date of these rules shall continue to be regulated in accordance with the terms and conditions of an individual permit issued under this subchapter. Any application for permit renewal, amendment or transfer for any permit issued under this subchapter prior to the effective date of these rules shall be reviewed and/or issued under the provisions of §321.34 of this title (relating to Procedures for Making Application for an Individual Permit). [All feedlot operations may be regulated by rule, subject to subsections (b)-(d) of this section, provided such operations comply with §321.35 of this title (relating to Surface Water Protection), §321.36 of this title (relating to Groundwater Protection), §321.37 of this title (relating to Feedlot Waste Utilization or Disposal By Land Spreading), §321.38 of this title (relating to Other Waste Disposal Methods) and §321.39 of this title (relating to Pesticide Use). The provisions of this subsection are applicable to all feedlot 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; and auction markets.]

(b) The executive director may require any animal feeding [feedlot] operation to comply with any of the requirements of this subchapter, including those to apply for, receive and comply with an individual permit under §321.34 of this title (relating to Procedures for Making Application for an Individual Permit), 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 [Texas Solid Waste Disposal Act, Revised Texas Civil Statutes, Article 4477-7, §1]; and §321.31 of this title (relating to Waste and Wastewater Discharge and Air Emission Limitations [Statement of No Discharge Policy]). [The executive director may require the operator of any feedlot operation to apply for and obtain a permit.] Cases for which an individual [a] permit may be required include, but are not limited to, situations where:

(1) the operation is located near surface and/or groundwater 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 ; [.]

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

(5) the owner and/or operator has submitted an application for registration or for a major amendment to a registration which does not comply with the requirements for administrative and technical completeness in §321.36(a)(1) of this title (relating to Notice of Application for Registration).

(c) New CAFOs are prohibited on the Edwards Aquifer recharge zone. [Notwithstanding the provisions of subsections (b) and (d) of this section, feedlots which are regulated by permit on the effective date of these rules shall continue to be regulated by permit]

(d) Any facility which qualifies for, obtains and is operating under a certified water quality management plan from the Texas State Soil and Water Conservation Board 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 [Operators of feedlot operations with more than the specified numbers of animals on an average daily basis in housed or open lots shall be regulated by permit issued by the commission:]

[(1) dairy cattle - 250 milking head;]

[(2) beef cattle - 1,000 head;]

[(3) swine - 1,500 head;]

[(4) sheep and goats - 6,000 head;]

[(5) horses - 600 head;]

[(6) chickens, including broilers, breeders and layers - 30,000 birds with liquid waste handling system; or 100,000 birds with continuous overflow watering system and dry waste handling system;]

[(7) turkeys, including breeders and feeders - 9,000 birds with liquid waste handling systems; or 32,000 birds with continuous overflow watering systems; or 35,000 birds in open lots].

(e) Operators of animal feeding [feedlot] operations not required to submit an application for either a registration or [obtain] an individual [a] permit under this subchapter or authorized by a CAFO general permit in accordance with the notice of intent requirements of the general permit [subsections (b) or (d) of this section] must locate, construct and manage waste control facilities and land application areas to protect surface and groundwaters and prevent nuisance conditions and minimize odor conditions in accordance with the technical requirements of §§321.38-321.40 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plan and Best Management Practices). [§321.35 of this title (relating to Surface Water Protection), §321.36 of this title (relating to Groundwater Protection), §321.37 of this title (relating to Feedlot Waste Utilization or Disposal By Land Spreading), §321.38 of this title (relating to Other Waste Disposal Methods) and §321.39 of this title (relating to Pesticide Use)]

(f) Any existing, new or expanding CAFO which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of the general permit or authorized pursuant to subsections (a) or (b) 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 §321.32(9)(A) of this title (relating to Definitions) shall apply for registration in accordance with §321.35 of this title (relating to Procedures for Making Application for Registration).

(g) Any existing, new or expanding animal feeding operation which is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of the general permit or authorized pursuant to subsections (a) or (b) of this section, is located in areas specified in the definition of Dairy Outreach Program Areas in §321.32 of this title, 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 §321.32(9)(B) of this title, but less than or equal to the number of animals specified in the definition of CAFO in §321.32(9)(A) of this title shall apply for registration in accordance with §321.35 of this title.

(h) Any CAFO authorized under this subchapter must develop and implement a pollution prevention plan in accordance with the provisions of this subchapter.

(i) Any existing, new or expanding CAFO, which is required to submit an application for registration or an application for an individual permit 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.

(j) Any CAFO which has existing authority under the Texas Clean Air Act (TCAA) does not have to meet the air quality criteria of this subchapter. Upon request, pursuant to the 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 TCAA shall be reviewed and/or issued under the provisions of Chapter 116 of this title.

(k) 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.

(l) By written request to the executive director, the owner/operator of any facility authorized under this subchapter prior to the effective date of these rules may request a transfer of authorization from an individual permit to an application for registration. Such transfer shall be processed in accordance with the provisions of §§321.35-321.37 of this title (relating to Procedures for Making Application for Registration, Notice of Application for Registration and Actions on Applications for Registration). If approved, such transfer under this subsection shall include all special conditions/provisions from the

existing permit, and in addition, 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. If approved, transfer of authorization under this subsection will require compliance with the appropriate provisions of §§321.38-321.42 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plans, Best Management Practices, Other Requirements, and Monitoring and Reporting Requirements). If approved, 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.

(m) No person may concurrently hold an individual permit or approved registration under this subchapter and an authorization under a CAFO general permit in accordance with the notice of intent requirements of the general permit for the same site.

(n) Any new CAFO located within one mile of Coastal Natural Resource Areas as defined by §33.203(1) of the Texas Natural Resources Code shall apply for and obtain an individual permit in accordance with §321.34 of this title (relating to Procedures for Making Application for an Individual Permit). Any owner/operator who is required to obtain an individual permit under this subsection may not commence physical construction and/or operation of any waste management facilities without first having submitted an application and received a final effective permit.

§321.34. Procedures for Making Application for an Individual [a] Permit.

(a) Any person whose CAFO is not authorized by a CAFO general permit in accordance with the notice of intent requirements of the general permit or does not hold an authorization for registration under this subchapter [feedlot operation does not conform to the criteria for regulation by rule set forth under §321.33 of this title (relating to Applicability)] shall apply for an individual [a] permit in accordance with the provisions of this section. Application for an individual [a] permit shall be made on forms provided by the executive director. The applicant shall provide such additional information in support of the application as may be necessary for an adequate technical review of the application. At a minimum, the application shall demonstrate compliance with the technical requirements set forth in §321.38-321.42 [§321.35] of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plan, Best Management Practices, Other Requirements and Monitoring and Reporting Requirements [Surface Water Protection), §321.36 of this title (relating to Ground Water Protection), §321.37 of this title (relating to Feedlot Waste Utilization or Disposal by Land Spreading), §321.38 of this title (relating to Other Waste Disposal Methods) and §321.39 of this title (relating to Pesticide Use), or other equivalent technical requirements] and shall demonstrate compliance with the requirements specified in §321.35(c)(1)-(13) of this title (relating to Procedures for Making Application for Registration). Applicants shall comply with §§305.41, 305.43-305.44 and 305.46-305.47 [305.45] of this title (relating to Applicability; Who Applies; Signatories to Applications; Designation of Material as Confidential and Retention of Application Data). 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 and §305.504 of this title (relating to Fee Assessments and Fee Payments). Except as provided in subsections (b)-(e) of this section, each permittee shall comply with §§305.61-305.68 of this title (relating to Applicability, Amendment, Renewal, Transfer of Permits, Permit Denial, Suspension and Revocation; Revocation and Suspension Upon Request or Consent; and Action

and Notice on Petition for Revocation or Suspension). Each permittee shall comply with §305.125 of this title (relating to Standard Permit Conditions). Individual permits granted under this subchapter shall be effective for a term not to exceed five years, unless stated otherwise in the permit or extended by order of the commission [authorized under this subchapter may be effective for the life of the project as determined by §305.127(1)(C) of this title (relating to Conditions to be Determined for Individuals Permits)].

(b) Permit renewal will be according to the following procedure: [.]

(1) An application to renew a permit for an [a confined] animal feeding operation which was issued between July 1, 1974, and December 31, 1977, may be renewed by the commission at a regular meeting without holding a public hearing if the applicant does not seek to discharge into or adjacent to waters in the state and does not seek to change materially the pattern or place of disposal.

(2) Except as provided by §305.63 (a)(3) of this title (relating to [Consolidated Permits --] Renewals), an application for a permit renewal which does not propose any other change to the permit and where there has been no related formal major enforcement action against the permitted facility during the last 36 months of the term of the permit may be granted by the executive director without a public hearing. 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 or ground water or an unauthorized discharge has occurred or that a violation of §101.4 of this title (relating to Nuisance) has occurred; such discharge or nuisance violation was within the reasonable control of the permittee; and such discharge or nuisance violation

could have been reasonably foreseen by the permittee. In addition to the provisions listed in this section, for any application for renewal of a permit within an area specified in the definition of Dairy Outreach Program Areas in §321.32(11) of this title (relating to Definitions) [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.

(c) Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees). [A fee of $315 to be applied toward processing of the application.]

(d) A permittee submitting an application for renewal satisfying the criteria in subsection (b) (2) of this section will automatically be issued a notice of renewal for the existing permit by the executive director.

(e) If the application for renewal cannot meet all of the criteria in subsection (b) of this section, then an application for renewal shall be filed in accordance with subsection (a) of this section.

(f) Any permittee with an issued and effective permit shall submit an application for renewal at least 180 days before the expiration date of the effective permit, unless permission for a later date has been granted by the executive director. The executive director shall provide the permittee notice of deadline for the application for renewal at least 240 days before the permit expiration date. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing permit.

(g) A facility owner/operator shall submit a complete application within 90 days of notification from the executive director that a permit is required.

§321.35. Procedures for Making Application for Registration [Surface Water Protection].

(a) Any person whose CAFO is neither authorized by a CAFO general permit in accordance with the notice of intent requirements of the general permit nor holds an existing individual permit under the provisions of this subchapter is required to apply for and receive registration under this section. A person who requests a registration or an amendment, modification, or renewal of such registration granted under this subchapter shall submit a complete and accurate application to the executive director, according to the provisions of this section [Waste control facilities shall be managed so as to retain all feedlot rainfall runoff from open lots and associated areas resulting from a 25-year or lesser rainfall event, process generated wastewater, and waste, as provided in this subchapter.]

[(1) Off-site drainage diversion: When feedlot wastes must be isolated from outside surface drainage by ditches, dikes, berms, terraces or other such structures, these diversion structures shall be designed to carry peak flows expected at times when the 25-year rainfall event occurs.]

[(2) Waste and wastewater retention facilities: Dikes, pits, ponds, lagoons, or other structures relied on to hold waste materials and rainfall runoff shall have capacity sufficient to retain:]

[(A) all runoff from open lots and associated areas resulting from the 25-year rainfall event; and]

[(B) all waste and process generated wastewater produced during a period of time not less than the minimum storage period value obtained from Exhibit 2 of §321.41 of this title (relating to Appendix A).]

(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). [Adequate equipment shall be available for removal of such waste and wastewater as required for compliance with the provisions of subsection (a) of this section or the provisions of the operator's permit. Prescribed capabilities of diversion and containment structures shall be maintained at all times]

(c) Application for registration under this section shall be made on forms prescribed by the executive director. The applicant shall submit an original completed application with attachments to the executive director at the headquarters in Austin, Texas, and one additional copy of the application with attachments to the appropriate Texas Natural Resource Conservation Commission regional office. The completed application shall be submitted to the executive director signed and notarized and with the following information: [Runoff volume from the feedlot surface shall be determined from soil cover complex curve number 90 for unpaved lots, or soil cover complex curve number 95 for paved lots, as defined by the United States Department of Agriculture (U.S.D.A.) Soil Conservation Service and as depicted in Exhibit 3 of §321.41 of this title (relating to Appendix A). The executive director may approve the use of a different soil cover complex curve number with regard to unpaved lots on a case-by-case basis]

(1) The verified legal status of the applicant.

(2) The payment of applicable fees.

(3) The signature of the applicant, in accordance with subsection (b) of this section.

(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 CAFO, 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 CAFO 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 CAFO and at least a one mile area surrounding the facility.

(7) One original (remainder in copies) United States 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 CAFO, and within 500 feet of the

outer boundary of the land application area(s), open lots and control facilities, the location of all private water wells (abandoned or in use) and public wells and all springs, lakes, or ponds within one mile of the outer boundary of the retention facility and downstream of the facility.

(8) A copy of the pollution prevention plan for the CAFO for which the application is filed. Prior to utilization of wastewater retention facilities, documentation of liner certifications by a licensed 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 CAFO. 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, licensed 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 can not 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, licensed professional engineer, or qualified ground water scientist. The applicant shall also submit a plan, developed by a NRCS engineer or licensed professional

engineer, to prevent impacts on the recharge 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 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 and §305.504 of this title (relating to Fee Assessment and Fee Payment). 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 an authorization issued under this section [Retention facilities as required in subsection (a) of this section shall be equipped with either irrigation or evaporation systems capable of dewatering the retention facilities.]

[(1) For irrigation disposal systems, except as provided in paragraph (3) of this subsection, whenever 50% of the design runoff storage capacity is exceeded by accumulated runoff, sediment, manure, and/or process generated wastewater, the retention facility shall be dewatered to a level that restores the full runoff storage capacity and the dewatering process shall be completed within a 21-day period. If the irrigation system is not capable of dewatering the retention facilities as required herein, sufficient additional storage capacity shall be provided in lieu of dewatering capabilities upon written approval of the executive director, and under such terms and conditions as the executive director may specify.]

[(2) Evaporation systems shall be designed to withstand a 10-year period of maximum recorded rainfall, as determined by a water budget analysis, and freeboard shall be maintained to dispose of rainfall and rainfall runoff from the 25-year rainfall event without overflow.]

[(3) Operators using pits, ponds, or lagoons for storage and treatment of manure and process generated wastewater, including flushwater waste handling systems, shall maintain in their wastewater retention facility sufficient freeboard to contain rainfall and rainfall runoff from a 25-year rainfall event. The operator shall restore normal freeboard within 21 days of any rainfall event or accumulation of manure or process generated wastewater which reduces such freeboard.]

[(4) Retention facilities shall not be located within the 100-year floodplain unless protective measures are designed and constructed.]

(e) Each permittee shall comply with §§305.61, 305.64 and 305.66-305.68 of this title (relating to Applicability, Transfer of Permits, Permit Denial, Revocation and Suspension, Revocation and Suspension Upon Request or Consent, Action and Notice on Petition for Revocation or Suspension).

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

(g) At the time of initial application, any new facility or expansion of an existing facility designed to confine livestock in numbers equal to or greater than 1000 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 0.50 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 section, 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.

(h) Renewal of a registration under this section will be according to the following procedures:

(1) Except as provided by §305.63 (a)(3) of this title (relating to Renewals), an application for a renewal of a registration which does not propose any other change to the registration as approved and where there has been no related formal major enforcement action against the facility during the last 36 months of the term of the registration may be granted by the executive director without a public hearing. 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 or ground water or an unauthorized discharge has occurred or that a violation of §101.4 of this title (relating to Nuisance) has occurred; such discharge or nuisance violation was within the reasonable control of the permittee; and such discharge or nuisance violation could have been reasonably foreseen by the permittee. In addition to the above provisions, for any application for renewal of a registration within an area specified in the definition of Dairy Outreach Program Areas in §321.32(11) of this title (relating to Definitions), an annual compliance inspection shall have been completed within the 12 months prior to the executive director processing the application.

(2) Each applicant shall pay an application fee as required by §305.53 of this title (relating to Application Fees).

(3) A permittee submitting an application for renewal of a registration satisfying the criteria in paragraph (1) of this subsection will automatically be issued a notice of renewal for the existing registration by the executive director.

(4) If the application for renewal of a registration cannot meet all of the criteria in paragraph (1) of this subsection, then an application for renewal of the registration shall be filed in accordance with subsection (a) of this section and processed in accordance with **§§**321.36-321.37 of this title (relating to Notice of Application for Registration and Action on Applications for Registration).

(5) Any permittee with an effective registration shall submit an application for renewal at least 180 days before the expiration date of the effective registration, unless permission for a later date has been granted by the executive director. The executive director shall provide the permittee notice of deadline for the application for renewal at least 240 days before the registration expiration date. The executive director shall not grant permission for applications to be submitted later than the expiration date of the existing registration.

§321.36. Notice of Application for Registration [Groundwater Protection].

(a) Administrative and Technical Review. [All wastewater retention facilities shall be constructed of compacted or in-situ earthen materials which meet the following particle size gradation and Atterberg limits:]

(1) Applications for registration or major amendments to such registrations under this subchapter shall be reviewed by the executive director for administrative and technical completeness within 30 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. [30% or more passing a number 200 mesh sieve;]

(2) 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. [liquid limit of 30% or greater; and]

[(3) a plasticity index of 15 or greater.]

(b) Notice of application. The notice of application for registration and administrative/ technical completeness shall contain the following information:[If the wastewater retention facilities are not constructed in suitable materials as described in subsection (a) of this section, then an alternate lining shall be required. Suitable linings include earthen blankets and impervious materials.]

(1) the identifying number given the application for registration by the commission;

[Earthen blankets shall consist of suitable materials as described in subsection (a) of this section and shall have a minimum compacted thickness of 12 inches.]

(2) the type of authorization being sought under the application;[Impervious materials include flexible membrane linings, asphalt-sealed fabric liners, and bentonite sealants. Installation of impervious materials shall be in accordance with a detailed plan which meets the USDA Soil Conservation Service conservation practice standard and specification code 521 "Pond Sealing or Lining".]

(3) the name and address of the applicant; [The permittee shall furnish suitable evidence that a completed lining, as described in subsection (b)(1) and (2) of this section, meets the appropriate criteria.]

(4) the date on which the application for registration was submitted;

(5) a brief summary of the information included in the application for registration, 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 for registration 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 for registration; and

(7) the date, time, and place where all comments are to be received by the executive director in relation to the numbered application for registration, such comment period shall not be less than 30 days from the actual date of publication

(c) Publication. [Alternative methods of lining, other than those described in subsections (a) and (b) of this section, require prior written approval of the executive director]

(1) The applicant shall cause the notice of application for registration 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 for registration and administrative/technical completeness shall not be later than the date set by the chief clerk.

(3) The applicant is responsible for the cost of publication. The applicant shall notify the chief clerk verbally or by facsimile within 24 hours of the first available working day after the publication of the notice, and shall provide the chief clerk a certified copy of the publication, within 20 calendar days of the date established by the chief clerk for publication. If the applicant does not provide the chief clerk 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.

(d) Application returned. If an application for registration 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 (30 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 for registration 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. [Earthen retention facilities in existence on the date this subchapter becomes effective shall be exempt from the requirements of subsections (a) and (b) of this section provided the owner or operator prevents the discharge of wastes into surface and groundwaters. This exemption does not affect previously issued permits having permit terms and conditions which specifically require the lining of retention facilities. Whenever the discharge of waste or wastewater into surface and groundwater occurs, or threatens to occur, the executive director may require compliance with the provisions of subsection (a) and (b) of this section].

(e) Notice by mail.

(1) The chief clerk will transmit the notice of application for registration 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 chief clerk 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 mailout occurred, shall create a presumption that notice was mailed in accordance with this section.

(2) the notice shall be mailed by the chief clerk 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);

(I) for applications regarding operations located in an area specified in the definition of Dairy Outreach Program Areas in §321.32 of this title (relating to Definitions), notice shall be mailed to the river authority whose jurisdictional watershed includes that location; and

(J) for applications regarding operations located in an area within the jurisdiction of a ground water district, notice shall be mailed to such district.

(3) the date of mailing for a notice of application for registration and administrative/technical completeness shall be established by the chief clerk.

(4) The notice shall include instructions regarding the requirements contained in §321.37(a) of this title (relating to Public Comment on Applications for Registration) providing the manner and timeframe for the submission of comments to the proposed application for registration.

§321.37. Actions on Applications for Registration. [Feedlot Waste Utilization or Disposal By Land Application]

(a) Public Comment on Applications for Registrations. A person may provide the commission with written comments on any applications for registration for which notice has been issued under this subchapter. The executive director shall review any written comments when they are received within 30 days of mailing the notice. Only written comments received within the 30 day period are considered timely. The written information received will be utilized by the executive director in determining what action to take on the application for registration, pursuant to subsection (b) of this section [If land application is utilized for disposal of waste and/or wastewater, the following requirements shall apply:]

[(1) Utilization and disposal methods.]

[(A) Liquid and solid feedlot waste shall be distributed on agricultural lands so that neither the waste nor rainfall runoff will adversely affect the quality of receiving waters.]

[(B) When irrigation disposal of wastewater is used, tailwater facilities shall be provided as necessary to prevent the release of applied wastewater.]

[(C) Disposal of waste and wastewater shall be done in such a manner as to prevent nuisance conditions such as odors and flies.]

[(D) Wastewater shall not be irrigated when the ground is frozen or saturated or during rainfall events.]

[(2) Application rates. Except as may be required by permit, liquid and solid waste, and/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.]

[(3) Management of wastes. Collection, storage, and disposal of liquid and solid waste shall be managed in accordance with recognized practices of good agricultural management.]

(b) The executive director shall determine, after review of any application for registration, if he will approve or deny an application for registration in whole or in part, deny with prejudice, suspend the authority to conduct an activity for a specified period of time, or amend or modify the proposed activity requested by the applicant. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for major amendment of any existing application. In consideration of such an application for registration, the executive director will consider all relevant requirements of this subchapter and consider all information pertaining to those requirements received by the executive director regarding the application for registration. The written determination on any application for registration, including any authorization granted, shall be mailed to the applicant upon the decision of the executive director. At the same time the executive director's decision is mailed to the applicant, a copy or copies of this decision shall also be mailed to all persons who submitted written information on the application, as described in subsection (a) of this section. [All solid waste materials stockpiled or retained onsite shall be isolated from all run-on storm waters by dikes, terraces, berms,

ditches, or other similar structures and shall be maintained so as to retain all rainfall which comes in contact with the stockpiled solid waste material]

(c) Motion for reconsideration. The applicant or any person submitting timely comments may file with the chief clerk a motion for reconsideration, under the procedures of §50.39(b)-(f) of this title (relating to Motion for Reconsideration), of the executive director's final approval of an application.

§321.38. Proper CAFO Operation and Maintenance. [Other Waste Disposal Methods].

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 Resource 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.[If the operator proposes to use methods of disposal other than land application, he must first obtain prior written approval from the executive director].

§321.39. Pollution Prevention Plans. [Pesticide Use]

(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 development, 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. [The operator shall prevent the discharge of waters which have been contaminated by pesticides and shall notify the executive director immediately if such discharge occurs]

(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 (5) 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. 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 pollutant sources. Potential pollutant sources include any activity or material that may reasonably be expected to add pollutants to waters in the state or create a nuisance condition from the facility. An evaluation of potential pollutant

sources should identify the types of pollutant sources, provide a description of the pollutant sources, and indicate all measures that will be used to prevent contamination from the pollutant sources. The type of pollutant sources found at any particular site varies depending upon a number of factors including site location, historical land use, proposed facility type, waste disposal practices, etc. The evaluation should encompass all land that will be used as part of the CAFO as indicated in the site plan. Each potential pollutant source must be identified in the plan. A thorough site inspection of the facility is recommended to ensure that all sources have been identified. Potential pollutant sources found at CAFO facilities include, but are not limited to, the following: manure; sludge; wastewater; dust; silage stockpiles; fuel storage tanks; pesticide storage and applications; lubricants; disposal of any dead animals associated with production at the CAFO; land application of waste and wastewater; manure stockpiling; pond clean-out; vehicle traffic; and pen clean-out. Each plan shall include:

(A) A site plan/map, or topographic map indicating, an outline of the property that will be used in the waste generation and disposal activities 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 features.

(C) 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 structural 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. The appropriateness of any controls shall reflect the identified sources of pollutants or nuisance at the facility.

(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 twenty-one (21) day, or greater, period;

(F) the estimated storage volume for a minimum one (1) 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 10-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) 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 licensed professional engineer, or certified to be in accordance with NRCS design standards. Compaction tests must be certified by a licensed 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 available capacity to contain rainfall and rainfall runoff from a 25-year, 24-hour rainfall event. The operator shall restore such capacity to store all runoff from a 25-year, 24-hour rainfall event after any rainfall event or accumulation of wastes or process generated wastewater which reduces such capacity , weather permitting. Equipment capable of dewatering the wastewater retention structures of waste and/or wastewater shall be available whenever needed to restore the capacity 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, licensed 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 licensed 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, licensed 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 licensed 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, licensed 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 ten percent 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 in accordance with this subchapter, 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 §321.42 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 pre-determined schedule for cleanout of all treatment lagoons to prevent the accumulation of solids from exceeding 50 percent 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 10 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 contaminated storm waters (rainwater 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 pick-up 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 §321.32 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 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 an 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 authorization 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 for land application areas where the waste is incorporated directly into the soil or 0-2 inches for land application areas where the waste is not incorporated into the soil; if a 0-2 inch sample is required under this subsection, then an additional sample from the 2-6 inch soil depth zone shall be obtained in accordance with the provisions of this section

(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

(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 indicates a level greater than 200 ppm of extractable phosphorus

(reported as P) in Zone 1 for a particular waste and/or wastewater disposal field or if ordered by the commission to do so in order to protect the quality of waters in the state, 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, or to a lower level as ordered by the commission.

(29) The permittee shall annually analyze at least one (1) representative sample of irrigation wastewater and one (1) 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 ninety (90) days of the effective date of the renewal, submit a ground water monitoring plan to the Agriculture Section, Water Quality 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.

(32) Permittee shall develop and implement a plan to abate odors at the CAFO. Such plan shall identify all structural and/or management practices that the owner/operator will employ to minimize odor conditions and control air contaminants at the facility.

§321.40. Best Management Practices. [Edwards Aquifer]

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. [New feedlot/concentrated animal feeding operations are prohibited on the recharge zone.]

(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-hr. 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 wells, except in accordance with Chapter 238 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 clean up shall be available to personnel.[New feedlot/concentrated animal feeding operations are prohibited on the recharge zone.]

§321.41. Other Requirements. [Appendix A]

(a) Education and Training.[Appendix A is a collection of exhibits which describe certain design requirements for waste control systems. (Figures 1-3: §321.41).]

(1) Any CAFO owner/operator with greater than 300 animal units and located within an area specified in the definition of Dairy Outreach Program Areas in §321.32 of this subchapter (relating to Definitions) shall file an application for registration and obtain authorization under this subchapter and, within twelve months of receiving such authorization, 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 twelve 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 clean up. 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 site plan/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 (3) 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.

EXHIBIT 1

25-Year 24-Hour Rainfall (Inches)

Ref: Weather Bureau Technical Paper No. 40

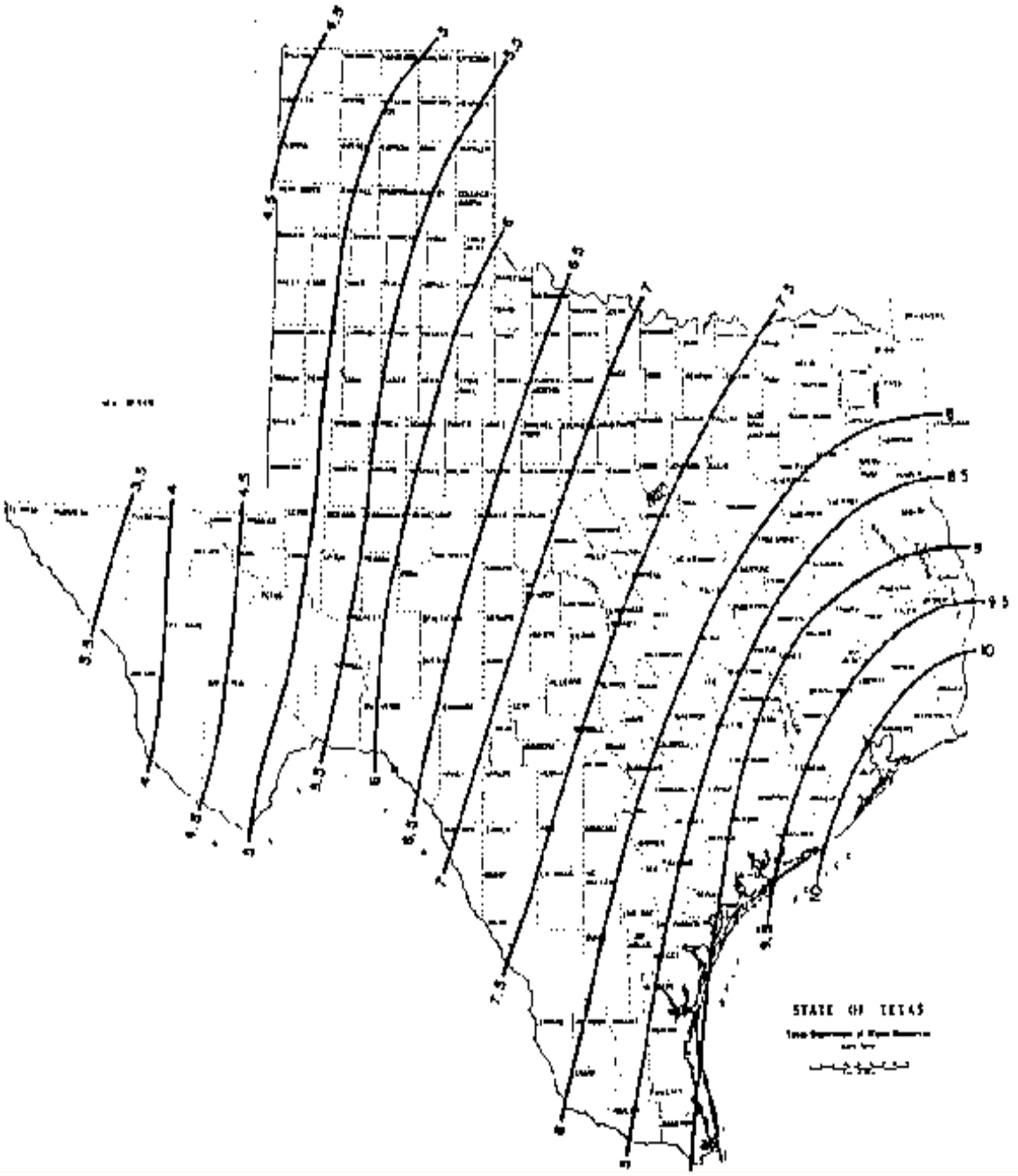


EXHIBIT Z

Minimum Storage Period In Days

Ref: TWDB Report 64

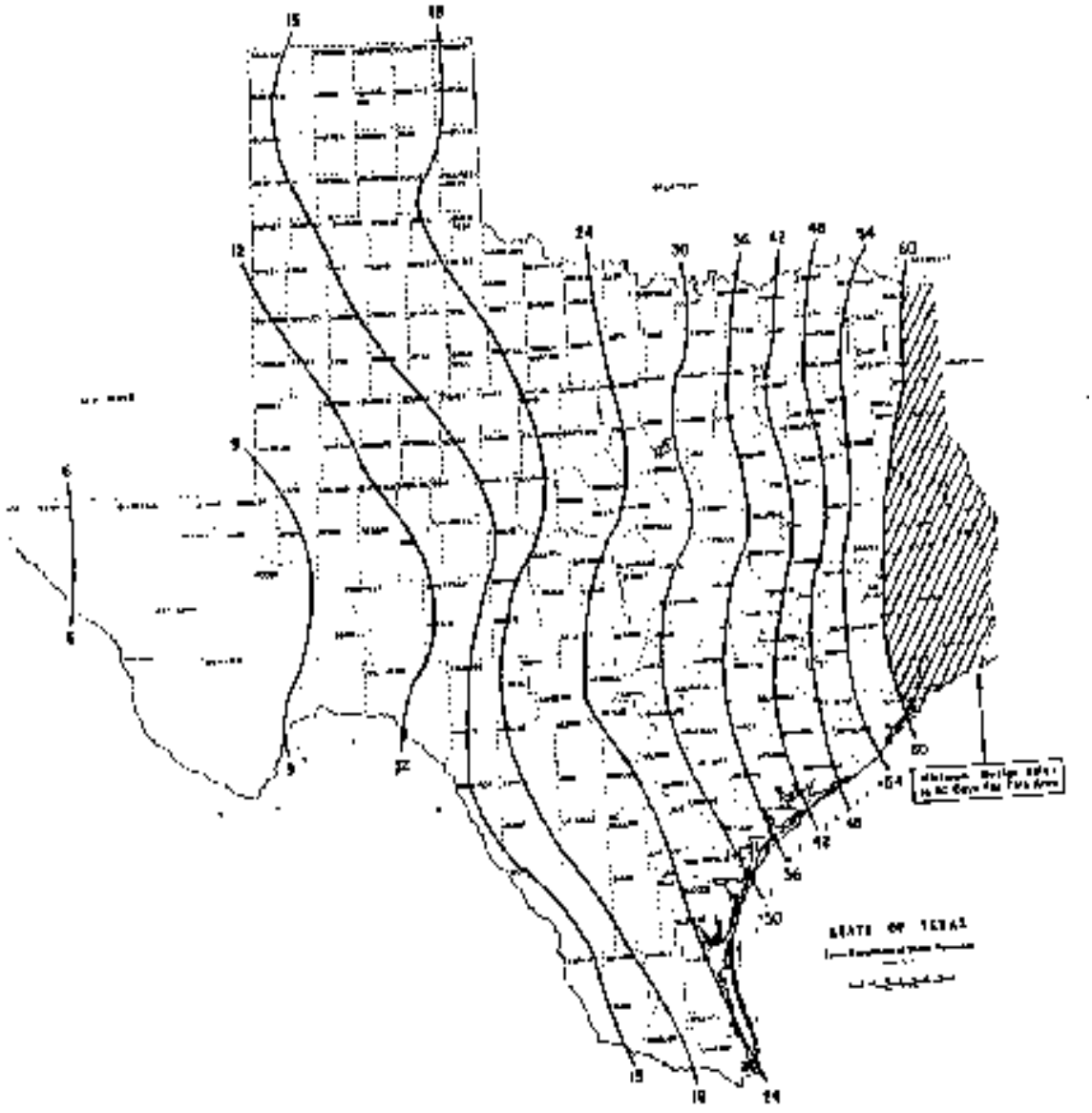
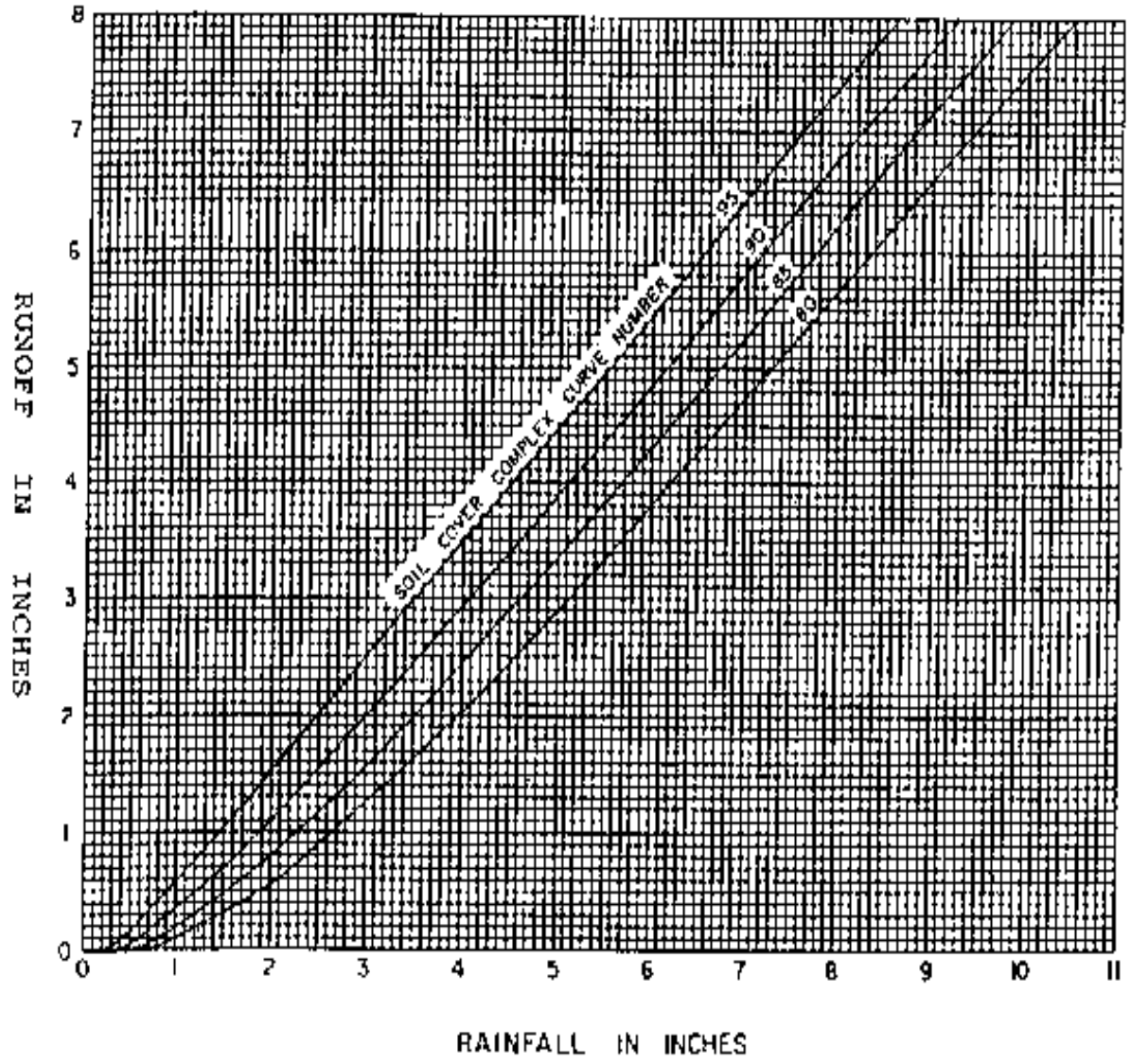


EXHIBIT 3

Prediction of runoff from feedlots using the soil cover complex procedure

Ref: USDA, SCS National Engineering Handbook, Section 4



§321.42. Monitoring and Reporting Requirements [Registration].

(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:[All dairies operating as concentrated animal feeding operations shall notify the executive director of their business name, physical location including a map or hand drawn sketch, mailing address and number of milking head. Such notification shall be in writing and signed by the owner/operator. Additionally, should a dairy concentrated animal feeding operation change substantially in the number of milking head, that dairy shall submit an amended notification.]

(1) A description and cause of the discharge, including a description of the flow path to the receiving water body. 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 over-flow 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 CFR 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; 5-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 §321.34 or 321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). 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 authorization, an application for a new authorization 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 §321.33 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 §321.34 or 321.35 of this title (relating to Procedures for Making Application for an Individual Permit or Procedures for Making Application for Registration). 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.

(j) Permittee shall furnish to the executive director soil testing laboratory results of all soil samples within 60 days of the date the samples were taken in accordance with the requirements of this subsection.

§321.43. Notification. [Best Management Practices]

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 §321.32 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 notification under this section. [The following Best Management Practices (BMPs) shall be utilized by concentrated animal feeding dairy owners/operators, as appropriate based upon existing physical and economic conditions, opportunities and constraints, until a finally effective permit or other authorization is issued by the commission or until a waste management plan is approved by the executive director.]

[(1) Practices to decrease lot runoff volume:]

[(A) divert runoff from clean areas above lot:]

[(i) construct ditches, terraces and waterways above an open lot;]

[(ii) install gutters, downspouts and buried conduits to divert roof drainage; and]

[(iii) provide more roofed area.]

[(B) decrease open lot surface area:]

[(i) increase animal density to reduce lot size;]

[(ii) improve lot surfacing to support increased animal density;]

[(iii) provide more roofed area;]

[(iv) collect manure more frequently; and]

[(v) eliminate areas that slope in directions such that wastewater/rainfall cannot be collected.]

[(2) Practices to decrease water volume:]

[(A) repair or adjust waterers and water systems to minimize water wastage.]

[(B) use practical amounts of water for cooling.]

[(C) use practical amounts of water for cleaning equipment.]

[(D) recycle water to flush manure from paved surfaces outside the milking parlor if practical and applicable.]

[(3) Practices to decrease lot runoff and wastewater discharges to watercourses:]

[(A) collect and allow wastewater to evaporate.]

[(B) collect and evenly apply wastewater to land.]

[(4) Practices to minimize solid manure transport to watercourses:]

[(A) do not stockpile manure near watercourses.]

[(B) provide adequate manure storage capacity based upon manure and waste production and land availability.]

[(C) apply solid manure to suitable land at appropriate times and rates:]

[(i) adjust timing and rate of applications to crop needs, assuming usual nutrient losses, expected precipitation and soil conditions;]

[(ii) avoid applications on frozen or saturated soils; and]

[(iii) avoid land subject to excessive erosion.]

[(D) use edge-of-field, grassed strips to separate eroded soil and manure particles from the field runoff.]

[(E) utilize off-site areas for manure application in a manner consistent with paragraphs (1) through (4) of this section.]

[(5) Practices to Protect Groundwater.]

[(A) locate waste management facilities a minimum horizontal distance of 150 feet from all water wells if practical.]

[(B) when applying waste/wastewater to land, utilize a buffer area around water wells to prevent the possibility of waste transport to groundwater via the well or well casing.]

§321.44. Dairy Outreach Program Areas. [Wastewater Retention]

[(a)] For the purposes of this subchapter the Dairy Outreach Program Areas 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. [Until issuance of a permit, a dairy owner/operator shall manage any waste control facilities so as to contain 70% of the rainfall and rainfall runoff collected from a 25-year, 24-hour rainfall event. If multiple rainfalls occur within a seven day period, an owner/operator shall contain rainfall and rainfall runoff equivalent to 50% of the 25-year, 24-hour rainfall event.]

[(b) Until issuance of a permit, a dairy owner/operator shall manage any waste control facilities to retain all waste and process generated wastewater produced during a time not less than 75% of the minimum storage period value obtained from Exhibit 2 of §321.41 of this title (relating to Appendix A).]

§321.45. Effect of Conflict or Invalidity of Rule. [Permit or Commission Authorization Required]

(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.[For new dairies, no dairy owner/operator who is required to obtain a permit may commence physical construction and/or operation of any waste management facilities

without first having submitted a permit application and receiving a finally effective permit or other commission authorization.]

(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.

§321.46. Air Standard Permit Authorization for a CAFO General Permit. [Permit Application within 90 days of Commission Notification]

Pursuant to Texas Clean Air Act Section 382.051, any CAFO which meets all of the requirements for operating under a CAFO general permit is hereby entitled to an air quality standard permit authorization 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). [The dairy owner/operator shall submit a complete permit application within 90 days of notification from the executive director that a permit is required.]