

The Texas Natural Resource Conservation Commission (Commission) proposes amendments to §§321.31-321.37, 321.39-321.42, 321.46 and new §321.47, concerning technical requirements and administrative procedures relating to authorizations of concentrated animal feeding operations (CAFOs).

The purpose of these changes is to provide for State assumption of NPDES permitting of CAFO facilities.

On September 14, 1998, the U.S. Environmental Protection Agency (EPA) authorized Texas to implement its Texas Pollutant Discharge Elimination System (TPDES) program. TPDES is the state program to carry out both the National Pollutant Discharge Elimination System (NPDES), a federal regulatory program to control discharges of pollutants to surface waters of the United States and the corresponding state permitting program. As part of the TPDES program, Texas has assumed responsibility for authorization of Concentrated Animal Feeding Operations (CAFO) facilities.

The current Subchapter B CAFO rules were adopted by the commission on August 19, 1998 and became effective on September 18, 1998. TNRCC's current authorizations by rule for CAFOs are state-only authorizations. The purpose of the proposed rules is to implement NPDES assumption and to make the existing rules consistent with federal regulations. As amended, this subchapter will allow the TNRCC to administer a single permitting program for NPDES and state permits and provide CAFOs the opportunity to apply for just one permit to gain both state and federal coverage.

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

(1) EPA Region VI General Permit for CAFOs (March, 1993), which establishes the currently effective technical and procedural requirements for CAFOs to meet in order to maintain federal authorization to discharge under the National Pollutant Discharge Elimination System (NPDES).

(2) Proposed EPA Region VI NPDES General Permit for CAFOs (1998), which proposes requirements for permit coverage for CAFOs that discharge or have a potential to discharge process wastewater into waters of the United States.

(3) 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.

(4) House Bill 1542, 75th Texas Legislature (1997), which amended §26.040 of the Texas Water Code. This bill specifies that all current rules adopted by the TNRCC under §26.040 as it read prior to the effective date of the HB 1542 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.

(5) Proposed EPA Region VI NPDES General Permit for CAFOs Located in Impaired Watersheds (1998), which proposes additional requirements for permit coverage for CAFOs and others that discharge or have a potential to discharge process wastewater into watershed impaired by CAFO-related activities.

(6) NPDES Memorandum of Agreement between the TNRCC and EPA Region VI (September 14, 1998), which establishes policies, responsibilities, and program commitments for assumption of the NPDES program by the TNRCC.

(7) Federal NPDES Regulations contained in 40 Code of Federal Regulations (CFR) Parts 122, and 412.

#### EXPLANATION OF PROPOSED RULE

Proposed changes to §321.31, Waste and Wastewater Discharge and Air Emission Limitations, deletes the term “disposed” in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B. Rather, the land application of manure and wastewater to cropland may be authorized at levels that do not exceed agronomic rates.

Proposed changes to §321.32, Definitions, includes adding swine weighing under 55 pounds within the definitions for “animal unit” and “CAFO” based on comments received on the previous proposed version of this rule. Also, the definition for “CAFO general permit” is being modified to accomplish the consistency between state and federal programs.

Proposed changes to §321.33, Applicability, provide that any facility holding authorizations from both the TNRCC and EPA shall continue to operate under the terms of these authorizations until the NPDES authorization expires. As part of NPDES assumption, TNRCC adopted the EPA's 1993 CAFO general permit, which will remain in effect as TPDES authorization for those facilities with NOIs filed with EPA and approved prior to March 10, 1998. That permit will cease to be effective when EPA issues a replacement general permit. At that time facilities that were operating under the expired EPA issued general permit must obtain TPDES authorization from TNRCC. Within sixty days of such expiration, a facility shall apply for authorization under this amended subchapter and shall continue to operate the facility under the terms of the expired authorization until final disposition of the application.

Any facility that holds an authorization from the TNRCC and that is not required to obtain NPDES authorization shall continue to operate under the terms of their existing TNRCC authorization until expiration, amendment or termination. All such TNRCC authorizations shall expire five years from the effective date of these rules, unless such authorization specifies a different expiration date.

Any facility that holds an authorization from the TNRCC and that is required, but does not hold, a current NPDES authorization, shall file an application under this subchapter within 60 days of the effective date these rules failure to timely submit an application may result in enforcement proceedings.

Any facility with an unexpired authorization under Chapter 321, and which is not required to obtain NPDES authorization, may request a transfer of its authorization to a registration under this subchapter if a written request is submitted on forms approved by the executive director and the facility operates in

accordance with the provisions of this subchapter. Those holding unexpired authorizations under Subchapter K are not excluded from this transfer provision. Subchapter K was declared invalid, and six specific Subchapter K registrations were canceled by judgment of a State District Court earlier this year. This judgment is currently on appeal. This proposal provides an optional vehicle for facilities with unexpired Subchapter K authorizations not specifically nullified by judicial order to transfer to Subchapter B.

The proposed changes would also clarify that an owner/operator holding a current authorization is required to obtain an amendment prior to any increase in the number of animals authorized for confinement or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination. Nonsubstantial modifications are described that may be made to the site plan or the Pollution Prevention Plan (PPP) without prior authorization from the commission. This list of nonsubstantial modifications is descriptive rather than exclusive, and staff intends to provide further elaboration by published guidance, if necessary.

Proposed changes to §321.34, Procedures for Making Application for an Individual Permit, adds an amendment procedure for individual permits. In addition, all applications for permit renewal must be administratively and technically complete and meet all applicable technical requirements of this subchapter.

Proposed changes to §321.35, Procedures for Making Application for Registration, would include requiring that all applications for permit renewal must be administratively and technically complete and

meet all applicable technical requirements of this subchapter. The application procedures for registrations were changed to clarify the existing amendment process and to allow the Executive Director to determine which Pollution Prevention Plan components are necessary in an application. Finally, the term “disposal” is proposed to be replaced by the term “land application” in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

The proposed change to §321.36, Notice of Application for Registration, includes the replacement of the term “disposal” with the term “land application” in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.37, Action on Applications for Registration, requires the executive director to consider any written comments on any applications for registration received within 30 days of mailing the notice.

Proposed changes to §321.39, Pollution Prevention Plans, would establish new requirements for land application of waste or wastewater. Some of the components that must be addressed in the PPP include: a site map showing the location of any land application areas; a description of waste handling procedures and equipment availability; the calculations and assumptions used for determining land application rates; and all nutrient analysis data.

Also, the proposed changes would require that when an annual soil sampling analysis for extractable phosphorus indicates a level greater than 200 parts per million (reported as P) in Zone 1 for a particular

waste and/or wastewater land application field, the operator cannot apply wastewater to the affected application area unless the land application is implemented in accordance with a detailed nutrient utilization plan developed by NRCS, or by any professional agronomist or soil scientist.

In addition, the term “disposal” was replaced with the term “land application” in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.40, Best Management Practices, replace the term “disposal” with the term “land application” in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.41, Other Requirements, reference the definition for CAFOs in §321.32(9)(B) and replaces the term “disposal” with the term “land application” in order to clarify that disposal of CAFO waste or wastewater is not authorized by Subchapter B.

Proposed changes to §321.42, Monitoring and Reporting Requirements, require that when control of a land application area changes, the operator must file an application to amend the existing authorization to reflect an alternate method for beneficially utilizing the waste or wastewater or to add new or additional land application areas to the authorization. Also, changes are proposed to require an operator to retain copies on-site of all records required by this subchapter and to make them available to the executive director upon request.

Proposed changes to §321.46, Air Standard Permit Authorization for a CAFO General Permit, provide that an air quality standard permit may be obtained in conjunction with a water quality application. If no water quality application is pending, a separate written request may be submitted which demonstrates compliance with all the requirements in this subchapter

Proposed new §321.47, Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization, establishes procedures under which an existing facility may submit written notice that it will operate as required under this amended subchapter as an authorized TPDES facility for the remainder of unexpired term of its current authorization. Upon expiration of the term of the facility's current authorization, the owner/operator shall file for an Individual Permit or Registration.

#### FISCAL NOTE

Matthew Johnson, Financial Administration, has determined that for each year of the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of administration or enforcement of the sections. The effect on state government is projected to be a slight increase in renewal application fee revenue from facilities currently holding perpetual permits and a slight increase in amendment fee revenue amending existing authorizations. Under the current rule, the fee to renew a CAFO permit is \$315.00 and the fee to amend a CAFO permit is \$350.00. The state is not expected to have an increase in operating costs because the amended rules will not result in additional cost to issue permits and registrations. There will be no anticipated effects for local governments because local governments will not be enforcing this rule.

The amended rule as proposed will require owner/operators intending to increase the number of animals at their facility to obtain an amendment to their existing authorization. The proposed sections will also require amendments for facility modifications that would cause a substantial change to the site plan or buffer determination. Such owner/operators would incur the cost of developing an amendment as well as any amendment fees. Under the current rule, the fee to amend a CAFO permit is \$350.00. The amended rule as proposed will also will change the maximum term of these permits to five years and require a relatively small number of owner/operators whose TNRCC CAFO permits are perpetual to renew their permits. Under the current rule, the fee to renew a CAFO permit is \$315.00. The proposed rule is not expected to adversely affect small business. Under the proposed sections, some CAFO owner/operators, including some who may be small businesses, may be required to file amendments or renewals to their existing CAFO permits. However, the regulatory fees of \$315.00 or \$350.00 for renewals or amendments are not estimated to be significant new costs where applicable. In general, CAFO owner/operators, including small businesses, are expected to realize significant time and cost savings as a result of implementing the delegated NPDES program, which allows permitting by and reporting to one regulatory entity instead of two.

#### **PUBLIC BENEFIT**

For the first five-year period the sections as proposed are in effect, the public benefit anticipated as a result of enforcement and compliance with the sections will be further implementation of the delegated NPDES program. Specifically, with NPDES delegation to Texas, the CAFO community is now regulated primarily by one entity (the TNRCC) instead of two (TNRCC and EPA). Regulated CAFO's

are expected to realize time and cost savings by reporting to and receiving permits from only one governmental entity.

#### 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). The proposed rule amendment, which is intended to protect the environment and reduce risks to human health, will not have a material adverse affect on the economy or sector of the economy, productivity, competition, jobs, the environment or the public health and safety of the state or a sector of the state. The proposed rule amendment will not have a material adverse affect on the economy or a sector of the economy, productivity, and jobs because the rule changes will allow the TNRCC to fulfill the requirements of TPDES assumption thereby eliminating the need to obtain separate federal and state authorization for operating a CAFO in Texas. The proposed rule amendment will not have a material adverse affect on the environment or the public health and safety of the state or a sector of the state because the rule changes will not make any of the technical requirements for operating a CAFO less stringent.

#### 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 Subchapter B rule amendments is to allow the TNRCC to fully implement the NPDES CAFO program in Texas by making the existing Subchapter B rules consistent with the EPA Region 6 CAFO general permit requirements. The rule changes will also allow the TNRCC to fulfill the requirements of TPDES assumption and to administer one permitting program for both NPDES and state permits. This action will not burden private real property that is the subject of the regulation because the amended rules will enable the TNRCC to fully implement the NPDES program for CAFOs in Texas and thereby eliminate the need to obtain separate federal and state authorization for operating a CAFO.

#### PUBLIC HEARING

A public hearing on the proposal will be held February 16, 1999 at 10:00 a.m. in Room 2210 of the Commission Building F, 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. 98074-321-WT and may be submitted to Heather Evans, 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., February 16, 1999. 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 policies 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 performed 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 in the coastal zone shall comply with water- quality-based effluent limits; 2) discharges in the coastal zone 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 these rules require that any new proposed CAFO located within one mile of a CNRA obtain an individual permit. This 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.

#### STATUTORY AUTHORITY

The amendments are proposed under the Texas Water Code, §26.040, under which the commission has authority to amend rules adopted under §26.040 prior to its amendment by H.B. 1542 in 1997, and §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) and 26.041 of the Texas Water Code and §§382.011, 382.017, and 382.051 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 OPERATIONS**

**§321.31-321.37, 321.39-321.42, 321.46, §321.47**

**§321.31. Waste and Wastewater Discharge and Air Emission Limitations.**

(a) It is the policy of the Texas Natural Resource Conservation Commission that there shall be no discharge or disposal of waste and/or wastewater from animal feeding operations into or adjacent to waters in the state, except in accordance with subsection (b) of this section, any individual permits issued or adopted by the commission [under this subchapter] prior to the effective date of these rules, [any] CAFO general permit [permits], or §305.1 of this title (relating to Scope and Applicability). Waste and[/or] wastewater generated by a concentrated animal feeding operation under this subchapter shall be retained and utilized [or disposed of] in an appropriate and beneficial manner as provided by commission rules, orders, 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 be designed in accordance with §321.39 of this title (relating to Pollution Prevention Plans).

(c) (No Change.)

**§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 will enhance soil productivity and provide the crop or forage growth with needed nutrients for optimum health and growth.

(2) (No Change.)

(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 beneficial use [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 swine weighing 55 pounds or less multiplied by 0.1, plus the number of sheep multiplied by 0.1, plus the number of horses/mules multiplied by 2.0.

(5) (No Change.)

(6) **Best Management Practices ("BMPs")** - The schedules of activities, prohibitions of practices, maintenance procedures, and other management and conservation 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] land application [waste disposal], or drainage from raw material storage.

(7) **CAFO general permit** - A general permit issued or adopted by the commission in accordance with Chapter 26 of the Texas Water Code[, §26.040] for the express purpose to regulate discharges from concentrated animal feeding operations on a statewide or geographic basis.

(8) (No Change.)

(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) - (ii) (No Change.)

(iii) 2500 swine weighing over 55 pounds or 10,000 swine weighing 55 pounds or less;

(iv) - (x) (No Change.)

(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) - (ii) (No Change.)

(iii) 750 swine weighing over 55 pounds or 3,000 swine weighing 55 pounds or less;

(iv) - (x) (No Change.)

(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] will be transported into surface water or groundwater 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 beneficial use or disposal. This includes the collection and retention of manure, liquid waste, process wastewater and runoff from the feedlot area.

(11) - (20) (No Change.)

(21) **New concentrated animal feeding operation** - A concentrated animal feeding operation which was not authorized under a rule, order or permit of the commission in effect at the time of the adoption of these amended rules (1999 [1998]).

(22) - (38) (No change.)

**§321.33. Applicability.**

(a) Any CAFO operating under currently effective authorizations granted under state law only by the TNRCC or under federal law by EPA prior to the effective date of these amended rules (1999) shall do one of the following: [A CAFO operating under a currently valid authorization granted prior to the effective date of these amended rules shall continue to be authorized and regulated in accordance with the terms of its existing authorization. Any application that has been determined administratively complete prior to the effective date of these amendments will be reviewed and issued under the provisions of the rules in effect at the time the application was declared administratively complete. 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).]

(1) Any facility holding both such authorizations shall continue to operate under the terms of both until the NPDES authorization expires. Within sixty days of expiration of the existing NPDES authorization, the facility owner/operator shall apply for authorization under this amended subchapter (1999) in accordance with the provisions of either §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). If such application is filed and is administrative and technically complete within the sixty day period, the applicant shall continue to operate the facility under the terms of the expired authorization until final disposition of the application in accordance with this subchapter.

(2) Any facility holding only an authorization from the TNRCC and which is not required under federal law to obtain NPDES authorization shall continue to operate under the terms of its existing TNRCC authorization until expiration, amendment or termination. All such TNRCC authorizations shall expire five years from the effective date of the amendments (1999) to these rules, unless such authorization specifies an earlier expiration date.

(3) Any facility holding an authorization from the TNRCC under state law only and which under federal law is required to, but does not, hold a current NPDES authorization, shall file an application in accordance with provisions of this subchapter within sixty days of the effective date of these amended (1999) rules.

(b) - (e) (No Change.)

(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 such [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) or individual permit in accordance with §321.34 of this title.

(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 such [the] general permit nor authorized pursuant to subsections (a) or (b) of this section, which is located in areas specified in the definition of Dairy Outreach Program Areas in §321.32 of this title, 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 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 or individual permit in accordance with §321.34 of this title.

(h) - (i) (No Change.)

(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 CAFO which files an application, meets the requirements of §321.46 of this title (relating to Air Standard Permit Authorization) and obtains approval of such application in accordance with the provisions [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) (No Change.)

(l) By written request to the executive director, the owner/operator of any facility [authorized by the commission] may request a transfer of its authorization from an individual permit granted by the commission to a [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 individual 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 both 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) (No Change.)

(o) By written request to the executive director, the owner/operator of any facility described in §321.33(a)(2) of this title (relating to Applicability) and holding an unexpired authorization granted under Subchapter K of this chapter (relating to Concentrated Animal Feeding Operations) may request a transfer of their authorization to a registration under this subchapter. Such written request shall be on the same form as required under §321.47 of this title (relating to Initial TPDES Authorization) and such continued authorization shall be in accordance with the terms of §321.47 of this title. A Subchapter K authorization that has been specifically set aside by court order shall not be eligible for transfer under this subsection. [Such request shall include:]

[(1) the name and address of the applicant(s);]

[(2) the TNRCC identification number the Subchapter K authorization to be transferred;]

[(3) any change that has occurred in the information contained in the application upon which the Subchapter K authorization was granted;]

[(4) the names and addresses of the potentially affected landowners required to be identified on the final site plan that would be required under §321.35 of this title (relating to Procedures for Making Application for Registration);]

[(5) certification that the facility is not the subject of an unexpired final enforcement order or of an unresolved TNRCC enforcement action in which the executive director has issued written notice that enforcement has been initiated; ]

[(6) the signatures and certifications of the applicant(s) as provided in §§305.43 and 305.44 of this title (relating to Who Applies and Signatories to Applications); and]

[(7) the application fee required under §321.35(d) of this title.]

(p) Any owner/operator holding a current authorization issued at any time under this subchapter shall obtain an amendment pursuant to §321.34 of this title (relating to Procedures for Making Application for an Individual Permit) or §321.35 of this title (relating to Procedures for Making Application for Registration) prior to any increase in the number of animals authorized for confinement

or to making any modification to the facility which would cause a substantial change to the site plan or in the buffer distance determination as specified in §321.46 of this title (relating to Air Standard Permit Authorization). Nonsubstantial modifications may be made to the site plan or the PPP submitted with the approved application without prior authorization from the commission. Nonsubstantial modifications do not include any that would result in an increase in the number of animals confined, a change in the required buffer zone or lagoon capacity, a change boundaries of the site plan or a violation of any management practice or physical or operational requirement of this subchapter. [Within five working days of receipt of a complete and accurate request, the executive director shall prepare a notice of the receipt of the request that is suitable for mailing and forward that notice, together with a copy of the request, to the chief clerk. The notice shall include a statement that the request for transfer will be granted by the executive director unless within 30 days after the date the notice is mailed, the chief clerk receives a written objection from a person described in §321.36(e) of this title (relating to Notice of Application for Registration). The chief clerk shall transmit the notice and a copy of the request to the persons and in the manner described in §321.36(e) of this title. If no such objection is timely received, the executive director shall approve the transfer. If the transfer is disapproved, and not withdrawn by the applicant, the request for transfer shall be processed under §§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 the request is approved either as a transfer or as a new registration under §§321.35-321.37 of this title, such authorization will require compliance with the 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), except that no changes shall be required to existing structural

measures which are documented to meet design and construction standards in effect at the time of installation or to any buffer zone requirement satisfied under the prior Subchapter K authorization.]

**§321.34. Procedures for Making Application for an Individual Permit.**

(a) A CAFO that was not authorized under a rule, order or permit issued or adopted by [of] the commission and in effect at the time of the adoption of these amended rules (1999) shall apply for an individual permit in accordance with the provisions of this section or shall apply for [an application for] registration in accordance with the provisions of §321.35 of this title (relating to Procedures for Making Application for Registration). Application for an individual 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 of this title (relating to Proper CAFO Operation and Maintenance, Pollution Prevention Plan, Best Management Practices, Other Requirements and Monitoring and Reporting 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 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). An annual Clean Rivers Program fees is also required as required under §220.21(d) of this title (relating to Water Quality Assessment Fees). Except as provided in subsections (b)-(e) of this section, each permittee shall comply with §§305.61 and 305.63-305.68 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. To qualify for the air quality standard permit, the applicant must meet the requirements in §321.46 of this title (relating to Air Standard Permit Authorization).

(b) All applications for permit [Permit] renewal must be administratively and technically complete, meet all applicable technical requirements of this subchapter and [will] be in accordance with one of [according to] the following [procedure]:

(1) An application to renew an individual permit for an 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 land application [disposal].

(2) Except as provided by §305.63(3) of this title (relating to Renewals), an application for a renewal of an individual [a] permit for a facility as described in §321.33(a)(2) of this title (related to Applicability) may be granted by the executive director without public notice if it does not propose any change which constitutes a major amendment as defined in Chapter 305 of this title or a major source as defined under Chapter 116 of this title. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the permit in which the commission has determined that:

(A) - (C) (No Change.)

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

(c) - (d) (No Change.)

[(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.]

(e) [(f)] Any permittee with an issued and effective individual 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.

(f) [(g)] Notice provided by the executive director under subsection (e) [(f)] of this section shall be sent by certified mail, return receipt requested.

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

(h) [(i)] If an application [for renewal] requests an [a major] amendment, as defined by §321.33 (p) [305.62] of this title (relating to Applicability [Amendment]), of the existing individual permit, an application shall be filed and processed as set out in [accordance with subsection (a) of] this section.

(i) [(j)] If a renewal application has been filed before the individual permit expiration date, the existing individual permit will remain in full force and effect and will not expire until action on the application for renewal is final.

**§321.35. Procedures for Making Application for Registration.**

(a) A CAFO that was not authorized under a rule, order or permit of the commission in effect at the time of the adoption of these amended rules shall apply for and receive registration under this section or shall apply for an individual permit in accordance with the provisions of §321.34 of this title

(relating to Procedures for Making Application for an Individual Permit). A person who requests a registration [or an amendment, modification,] or renewal of such registration granted under this subchapter, or an amendment as defined in §321.33(p) of this title (relating to Applicability), shall submit a complete and accurate application to the executive director, according to the provisions of this section.

(b) (No Change.)

(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 and one copy of the 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:

(1) - (4) (No Change.)

(5) A proposed [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, on-site and off-site land application [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 land application [waste disposal] areas, including their

name[,] and address [and telephone number]. As used in this subchapter, the term "land application [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 land application [beneficial use].

(6) - (7) (No Change.)

(8) Sections of the pollution prevention plan designated by the executive director [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) - (10) (No Change.)

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

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

(B) Submission of a detailed groundwater monitoring plan covering all affected facilities and land application [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) - (13) (No Change.)

(d) - (g) (No Change.)

(h) An application for renewal [Renewal] of a registration under this section must be administratively and technically complete, meet all applicable technical requirements of this subchapter and [will] be according to the following procedures:

(1) Except as provided by §305.63(3) of this title (relating to Renewals), an administratively and technically complete application for a renewal of a registration for a facility described in §321.33(a)(2) of this title (relating to Applicability) may be granted by the executive director without public notice if it does not propose any other change to the registration as approved. Renewal under this paragraph shall be allowed only if there has been no related formal enforcement action against the facility during the last 36 months of the term of the registration in which the commission has determined that:

(A) - (C) (No Change.)

(2) - (5) (No Change.)

**§321.36. Notice of Application for Registration.**

(a) Administrative and Technical Review.

(1) (No Change.)

(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 subsection (c) of this section, [§321.186(b) of this title (relating to Notice of Application)] and shall forward that statement to the applicant.

(b) Notice of application. The notice of application for registration and administrative/ technical completeness shall contain the following information:

(1) - (4) (No Change.)

(5) a brief summary of the information included in the application for registration, including but not limited to the general location of facilities and land application [disposal] areas associated with the application, the proposed size of the facility, a description of the receiving water for any discharge and the location where a copy of the application for registration may be reviewed by interested persons;

(6) - (7) (No Change.)

(c) - (d) (No Change.)

(e) Notice by mail.

(1) (No Change.)

(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) - (J) (No Change.)

(3) - (4) (No Change.)

**§321.37. Actions on Applications for Registration.**

(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 must [will] be considered. 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.

(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 condition approval upon amendment [amend] or modification of [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 registration [application]. In

considering [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 timely 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 by the Office of Chief Clerk 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 by the Office of Chief Clerk to all persons who timely submitted written information on the application, as described in subsection (a) of this section. The written determination of the executive director shall include a response to all significant comments received during the 30-day comment period.

(c) Motion for reconsideration. The applicant or any person submitting comments in accordance with subsection (a) of this section 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. Any person who was entitled to but not given proper notice of an application and who subsequently did not submit comments within the 30 day comment period may file a motion for reconsideration.

**§321.39. Pollution Prevention Plans.**

(a) -(e) (No Change.)

(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 from the facility. An evaluation of potential pollutant sources shall 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, land application [waste disposal] practices, etc. The evaluation shall 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) - (B) (No Change.)

(C) A list of any significant spills of these materials at the facility after the effective date (1999) of these rules, or for new facilities, since date of operation.

(D) (No Change.)

(2) -(7) (No Change.)

(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 two feet [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) - (18) (No Change.)

(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) (No Change.)

(B) When [irrigation disposal of] wastewater is used to irrigate land application areas,  
the plan shall include: a description of waste handling procedures and equipment availability; the  
calculations and assumptions used for determining land application rates; and all nutrient analysis data.  
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 shall be  
based on the available nitrogen content, however, where annual soil sampling analysis for extractable  
phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 ppm  
of extractable phosphorus (reported as P) in Zone 1 for a particular waste and/or wastewater land  
application field , the operator may apply wastewater to the affected application area only in accordance  
with the conditions established in paragraph (28)(G) of this subsection [local water quality is threatened  
by phosphorus, the operator shall limit the application rate to the recommended rates of available  
phosphorus for crop uptake, based upon crop and realistic yield goals, and provide controls for runoff  
and erosion as appropriate for site conditions.]

(C) - (H) (No Change.)

(I) The pollution prevention plan shall include the following information:

(i) a site map showing the location of any land application areas, either  
on-site or off-site which are owned, operated or under the control of the facility owner/operator which  
will be utilized for land application of waste and/or wastewater;

(ii) the location and description of the major soil types within the identified land application areas;

(iii) crop types and rotations to be implemented on an annual basis;

(iv) predicted yield goals based on the major soil types within the identified land application areas

(v) procedures for calculating nutrient budgets to be used to determine application rates;

(vi) a detailed description of the type of equipment and method of application to be used in applying the waste and/or wastewater;

(vii) projected rates and timing of application of the manure and wastewater as well as other sources of nutrients that will be applied to the land application areas.

(J) The owner/operator shall maintain on-site and update records of all waste and wastewater either utilized at the facility or removed from the facility.

(i) For facilities where waste or wastewater is applied on property owned, operated or controlled by the owner/operator, such records shall include the following

information: date of waste and/or wastewater application; location of the specific application site and the number of acres utilized during each application event; acreage of each individual crop on which waste and/or wastewater is applied; number of dry tons, percent nitrogen based on a dry basis, and the percent moisture content of the manure; and actual annual yield of each harvested crop.

(ii) Where waste or wastewater is removed from the facility, records must be maintained in accordance with paragraph (23) of this subsection.

(20) - (21) (No Change.)

(22) Where the operator decides to land apply manures or [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 all nutrient analysis data. Land application rates of wastes shall [should] be based on the available nitrogen content of the solid waste, except [.] however [However], where annual soil sampling analysis for extractable phosphorus as described in paragraph (28)(F) of this subsection indicates a level greater than 200 ppm of extractable phosphorus (reported as P) in Zone 1 for a particular waste and/or wastewater land application field , the operator may apply solid waste to the affected application area only in accordance with the conditions established in paragraph (28)(G) of this subsection [local water quality is threatened by phosphorus, the application rate shall be limited to the recommended rates of available phosphorus for crop uptake, based upon crop and realistic yield goals, and provide controls for runoff and erosion as appropriate for site conditions].

(23) If manure is sold or given to other persons for off-site land application or disposal, the operator 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 operator must make available to the hauler any nutrient sample analysis of the manure from that year.

(24) The procedures documented in the pollution prevention plan must ensure that the handling and land application [disposal] of wastes as defined in §321.32 of this title (relating to Definitions) comply with the following requirements:

(A) Manure storage capacity based upon manure and waste production and land availability shall be provided. Storage and/or surface application [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 agronomic rates shall not be considered surface disposal in this case and is not prohibited.

(B) - (C) (No Change.)

(D) Manure shall be uniformly applied to suitable land at appropriate times and at agronomic 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) - (G) (No Change.)

(H) Nighttime application of liquid and/or solid waste shall [only] be allowed only 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) - (L) (No Change.)

(25) - (27) (No Change.)

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

(A) - (D) (No Change.)

(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 test reports shall include nutrient recommendations for the crop yield goal.

(F) (No Change.)

(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 land application [disposal] field or if ordered by the commission to do so in order to protect the quality of waters in the state, then the operator shall not apply any [limit] waste and/or wastewater to the affected area unless the waste and/or wastewater application is implemented in accordance with a detailed nutrient utilization plan developed by NRCS, or any professional agronomist or soil scientist certified by the American Society of Agronomy (ASA) or who is an active member of ASA holding a Masters or Doctorate degrees from an accredited US institution in areas such as soil fertility, soil chemistry, soil conservation, agricultural engineering, soil environmental science, soil management or a closely related area and such plan is approved by the executive director. No land application under an approved nutrient utilization plan shall cause or contribute to a violation of water quality standards or create a nuisance. [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) - (31) (No Change.)

**§321.40. Best Management Practices.**

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

(1) - (6) (No Change.)

(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 land application [disposal] sites shall not be located closer than 500 feet of a public water supply well or 150 feet of a private water well [wells, except in accordance with Chapter 238 of this title (relating to Water Well Drillers)].

(8) - (11) (No Change.)

(12) Collection, storage, and land application [disposal] of liquid and solid waste shall be managed in accordance with recognized practices of good agricultural management. The economic

benefits derived from agricultural operations carried out at the land application [disposal] site shall be secondary to the proper application [disposal] of waste and wastewater.

(13) (No Change.)

**§321.41. Other Requirements.**

(a) Education and Training.

(1) Any CAFO owner/operator with greater than the number of animals specified in §321.32 (9)(B) of this title (relating to Definitions) [300 animal units] and located within an area specified in the definition of Dairy Outreach Program Areas in §321.32 of this title (relating to Definitions) shall 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 land application of 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 operator 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) - (f) (No Change.)

**§321.42. Monitoring and Reporting Requirements.**

(a) If, for any reason[,], there is a discharge to waters in the state, the operator shall [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 land application [disposal] system. In addition, the operator shall document the following information to the pollution prevention plan within 14 days of becoming aware of such discharge:

(1) - (7) (No Change.)

(b) - (c) (No Change.)

(d) The operator shall retain copies on-site [of] all records required by this subchapter for a period of at least three years from the date reported or received, and shall make them available to the executive director upon request. This period may be extended by request of the executive director at any time.

(e) -(g) (No Change.)

(h) The operator shall maintain ownership, operation or control over the retention facilities, land application [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 owner loses ownership, operation or control of any of these areas, the operator shall notify the executive director prior to such loss of control and immediately request and file an application to amend the existing authorization to reflect an alternate method for beneficially utilizing the waste or wastewater or to add new or additional land application areas to the 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 operator 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 operator does not properly locate and maintain such facilities in accordance with the [final] site plan and the provisions of §321.33(p) of this title (relating to Applicability) they shall be deemed in noncompliance with the provisions of this subchapter.

(j) Operator 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 subchapter [subsection].

**§321.46. Air Standard Permit Authorization.**

Pursuant to Texas Clean Air Act §382.051, any CAFO which meets all of the requirements for registration or individual permit outlined in this subchapter or all the requirements for operating under a CAFO general permit and which satisfy this section 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). Facilities which meet all the “Air Quality Only” requirements in §321.39 of this title (relating to Pollution Prevention Plans) and obtain either a registration or individual permit or a CAFO general permit are eligible for an air quality standard permit. The air quality standard permit may be obtained in conjunction with a water quality application. If no water quality application is pending, a separate

request may be submitted in writing which demonstrates compliance with all the requirements in this subchapter. In addition to meeting the “Air Quality Only” requirements, the applicant must also demonstrate compliance with the following:

(1) -(2) (No Change.)

**§321.47. Initial Texas Pollutant Discharge Elimination System (TPDES) Authorization.**

In lieu of the procedure specified in §321.33 of this title (relating to Applicability), the owner/operator of any existing facility as described in §321.33(a) of this title (relating to Applicability) may submit to the executive director written notice that they will operate the facility in accordance with the provisions of this subchapter. Such notice shall be on forms approved by the executive director and submitted within 45 days of the effective date of these amended (1999) rules. A facility for which a complete and accurate written notice has been submitted in accordance with this section may operate as an authorized TPDES facility under this amended subchapter for the remainder of unexpired term of their current authorization. Upon expiration of the specified term of the facility’s current authorization, the owner/operator shall file for renewal in accordance with either §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). If the existing authorization contains any special conditions or provisions, the owner/operator shall operate such facility in accordance with the provisions of this subchapter and any additional special provisions or conditions specified in the authorization.

