

# **Texas Commission on Environmental Quality**

## **Interoffice Memorandum**

**To:** Commissioners **Date:** June 30, 2025

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

**From:** Cari-Michel La Caille, Director  
Office of Water

**Subject:** Docket No. 2023-1229-RUL/Non-Rule Project No. 2023-139-321-OW  
Revised Back-up for Commission Approval for Rulemaking Adoption  
Rule: Chapter 321 Control of Certain Activities by Rule  
    Subchapter B – Concentrated Animal Feeding Operations  
    Subchapter Q – Land Application of Dairy Waste Authority  
    Chapter 335 Industrial Solid Waste and Municipal Hazardous Waste  
Strikethrough and Highlighted Revised Version of the Executive Summary and  
Chapter 321 Preamble.  
Rule Project No. 2023-139-321-OW

In the revised back-up package filed for Rule Project No. 2023-139-321-OW/ Land Application and Disposal of Dairy Waste in Control Facility, the agency is revising the definition for *Water in the State* to reference the “Gulf of Mexico”. Legislation introduced during the 89th Legislative Session proposing an update to the name was not signed into law. Therefore, the name change is no longer being made.

**Attachments:**

Revised Executive Summary and Chapter 321 Preamble

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Patrick Lopez  
Krista Kyle  
Jessie Powell  
Office of General Counsel  
Shannon Gibson  
Michael Parr  
Gwen Ricco

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** June 20, 2025

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

**From:** *cm* Cari-Michel La Caille, Director  
Office of Water

**Docket No.:** 2023-1229-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 321 Control of Certain Activities by Rule  
Subchapter B - Concentrated Animal Feeding Operations  
Subchapter Q - Land Application of Dairy Waste Authority  
Chapter 335 Industrial Solid Waste and Municipal Hazardous Waste  
Land Application and Disposal of Dairy Waste in Control Facility  
Rule Project No. 2023-139-321-OW

### Background and reason(s) for the rulemaking:

This rulemaking implements House Bill (HB) 692, 88th Regular Legislative Session, which added §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC) and §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC).

Through additions to THSC and TWC, HB 692 grants Texas Commission on Environmental Quality (TCEQ) rulemaking authority to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application; 2) adopt rules allowing the disposal of dairy waste from dairy operations, as defined in the rules to include permitted concentrated animal feeding operations (CAFOs) and unpermitted animal feeding operations (AFOs), into a control or retention facility, including a lagoon or playa; and, 3) authorize land application by irrigation associated with that disposal.

The rule additions provide other avenues to dairy operators and less costly means of disposing of dairy waste within existing dairy operations during emergency conditions, as defined in the rule in similar manner to Texas Government Code 551.045(b)(2).

### Scope of the rulemaking:

#### A.) Summary of what the rulemaking will do:

This rulemaking amends 30 Texas Administrative Code (TAC) to add new subsections §321.48 and §321.49 to 30 TAC Chapter 321, Subchapter B, *Concentrated Animal Feeding Operations*, to allow dairy operations to land apply dairy waste directly to land application areas and store dairy waste in a retention control structure (RCS), including a lagoon or playa, and irrigate land application areas with dairy waste from the RCS.

New subsections §321.48 and §321.49 require dairy operators to update the site-specific nutrient management plan (NMP) should the need arise for land application of dairy waste and to irrigate land application areas based on the application rates that are determined in accordance with the narrative rate approach from both Title 40 Code of Federal Regulations (CFR) §122.42(e)(5)(ii), and 30 TAC §321.36(c). This approach allows changes to the NMP to occur at the facility at any time, and adjustments can be made in the implementation of the plan. The new subsections include requirements to protect surface water and groundwater quality, ensure benefits to vegetation, and prevent nuisance conditions.

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This rulemaking also adds new subsections §321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413 under new 30 TAC Chapter 321, Subchapter Q, *Land Application of Dairy Waste Authority*, which allows entities, including landowners and any person along the dairy supply chain (milk haulers, milk processing plant, and milk bottling facilities) to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an AFO or any other TCEQ authorization. The rule establishes requirements for land application activities and a requirement to obtain the property owner's consent for use of an application site.

This new subchapter allows any milk plant, receiving station, transfer station, milk tank truck, dairy product manufacturer, and frozen dessert manufacturer located and operating in the State of Texas that are regulated by the Texas Department of State Health Services under 25 TAC Chapter 217, *Milk and Dairy*, Subchapter F, *Permits, Fees and Enforcement*, to deliver dairy waste to landowners during emergency conditions for beneficial use. Dumping of dairy waste is prohibited by this rule.

Additionally, this rulemaking amends 30 TAC Chapter 335 to exempt these activities from the permitting requirement in §335.2 and the notification requirement in §335.6.

**B.) Scope required by federal regulations or state statutes:**

Rules adopted under state statutes in THSC, §361.1215 must:

- authorize land application of dairy waste by rule;
- minimize the risk of water quality impairment caused by the land application; and
- prescribe the conditions under which an authorization is issued, including the duration, location, maximum quantity or application rate, suggested agronomic application rate, and best management practices for handling and disposal of the dairy waste.

Rules adopted under state statutes in TWC, §26.0481 must:

- authorize the disposal of dairy waste from a dairy operation into a RCS, including a lagoon or playa;
- authorize the land application by irrigation associated with that disposal;
- include requirements that minimize the risk of water quality impairment caused by the disposal of dairy waste into the RCS and by the land application by irrigation associated with that disposal; and
- require best management practices to ensure that the disposal of dairy waste into the RCS does not impair water quality.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

Though not specifically directed by the statutes added by HB 692, the adopted rule provides a definition of "emergency conditions," which is patterned after Government Code §551.045(b)(2), under which dairy waste disposal and land application can take place.

**Statutory authority:**

- TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission;
- TWC, §26.0481, which provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal; and
- THSC, §361.1215, which provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

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**Effect on the:**

**A.) Regulated community:**

Following adoption, AFO and CAFO dairy operations will have authorization to store dairy waste and irrigate to land application areas. Dairy CAFOs must update the site-specific NMP to determine the application rates of nutrients from all sources; revise the site-specific odor control plan; and implement best management practices for the RCS(s) and land application areas to prevent water quality impairment. Additional laboratory analysis fees may be required for wastewater that includes dairy waste, and soil testing of the land application areas that will or have received the dairy waste.

Non-AFO/CAFO agricultural operations that are not currently regulated by TCEQ would have to comply with the new regulations in Subchapter Q if they propose to land apply dairy waste, and are responsible for any violations.

**B.) Public:**

There is the potential for air quality/odor complaints from properties adjacent to the control or retention facilities that store dairy waste or the dairy waste land application areas.

**C.) Agency programs:**

The Water Quality Division (WQD) is required to develop rules and update 30 TAC Chapter 321, Subchapter B by adding new subsections §321.48 and §321.49, and adding new Subchapter Q, which includes new subsections §321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413. The Office of Compliance and Enforcement will have to conduct investigations, respond to complaints, and receive notifications when dairy waste is disposed of in a control or retention facility and/or land applied. The Office of Waste is updating §335.2 and §335.6 in this rulemaking to exclude dairy waste from the permitting and notification requirements.

**Stakeholder meetings:**

Updates on this rulemaking were provided at the quarterly Water Quality Advisory Work Group (WQAWG) meetings hosted by TCEQ on October 24, 2023; January 16, 2024; April 16, 2024; July 16, 2024; October 15, 2024, January 21, 2025, and April 15, 2025. Updates will continue to be provided at subsequent WQAWG meetings as needed.

**Public Involvement Plan:**

A Public Involvement Plan is required for this rulemaking and has been prepared.

**Alternative Language Requirements:**

Alternative Language Requirements apply for this rulemaking (Spanish).

**Public comment:**

At the February 13, 2025 Agenda, the commission directed the executive director to specifically invite public comment on the proposal to authorize the dairy waste management activities only

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under emergency conditions, without THSC, §361.1215 and TWC, §26.0481 expressly stating that they apply only in such situations. The proposed rule package was revised accordingly prior to publication in the *Texas Register*.

The rule was published in the *Texas Register* on February 28, 2025. The commission held a hybrid public hearing on March 31, 2025. The 30-day public comment period closed on the same date. No public comments were received.

**Significant changes from proposal:**

~~The definition for Water in the State was updated to specify “Gulf of America” under new §321.405.~~

**None.**

**Potential controversial concerns and legislative interest:**

There are no anticipated controversial concerns or legislative interest expected, outside of interest in providing other avenues to dairy operators and less costly means of disposing of dairy waste within existing dairy operations during emergency conditions.

**Will this rulemaking affect any current policies or require development of new policies?**

This rulemaking does not have any effect on current policies but would create a new mechanism (new §321.48, §321.49, §321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413) for dairy operations to dispose of dairy waste during emergency conditions.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

This rulemaking is required to implement HB 692. If this rulemaking doesn't go forward, TCEQ would not be compliant with state statute.

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** February 28, 2025

**Anticipated adoption date:** July 9, 2025

**Anticipated *Texas Register* adoption publication date:** July 25, 2025

**Anticipated effective date:** July 31, 2025

**Six-month *Texas Register* filing deadline:** August 28, 2025

**Agency contacts:**

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Michael Parr, Staff Attorney, Environmental Law Division, (512) 239-0611

Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

**Attachments:**

HB 692

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Patrick Lopez

Commissioners

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Krista Kyle  
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The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the addition of new §§321.48, 321.49, 321.401, 321.403, 321.405, 321.407, 321.409, 321.411, and 321.413.

New §§321.48, 321.49, 321.401, 321.403, 321.405, 321.407, 321.409, 321.411, and 321.413 are adopted without changes to the proposed text as published in the February 28, 2025, issue of the *Texas Register* (50 TexReg 1632) and, therefore, will not be republished.

~~New §321.405 is adopted with changes to the proposed text as published in the February 28, 2025, issue of the *Texas Register* (50 TexReg 1632) and, therefore, will be republished.~~

### **Background and Summary of the Factual Basis for the Adopted Rules**

TCEQ is adopting amendments to 30 Texas Administrative Code (TAC) Chapter 321 (Control of Certain Activities by Rule), Subchapter B (Concentrated Animal Feeding Operations) and add new Subchapter Q (Land Application of Dairy Waste Authority) to implement House Bill (HB) 692, 88th Legislative Session, which added §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC) and §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC). The bill directs TCEQ to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application (THSC §361.1215); 2) adopt rules allowing the disposal of dairy waste from dairy operations either permitted as a concentrated

animal feeding operation (CAFO) or unpermitted animal feeding operation (AFO) into a control or retention facility, including a lagoon or playa (TWC §26.0481(b)(1)); and, 3) authorize land application by irrigation associated with that disposal (TWC §26.0481(b)(2)).

TCEQ is adopting new §321.48 and §321.49 to the CAFO rules in 30 TAC Chapter 321, Subchapter B, that allow dairy operations to land apply dairy waste directly to land application areas, or put dairy waste in a retention control structure (RCS), including a lagoon or playa, and subsequently irrigate land application areas with dairy waste from the RCS. These activities are only allowed under emergency conditions.

TCEQ adopts the addition of new §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, and 321.413 under new 30 TAC Chapter 321, Subchapter Q, that allow entities, including landowners and any person along the dairy supply chain (milk haulers, milk processing plant, and milk bottling facilities), to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization.

As part of this rulemaking, the commission is also adopting amendments of 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste) concurrently in this issue of the *Texas Register*.



### **Section by Section Discussion**

Information from the State Technical Standards of the Natural Resource Conservation Service (NRCS) for Nutrient Management Code 590 are included for guidance. The requirements of the new CAFO Rules mandate dairy operators to update the site-specific nutrient management plan (NMP) if commencing land application of dairy waste and to irrigate land application areas based on the application rates that are determined in accordance with the narrative rate approach from both Title 40 Code of Federal Regulations (CFR) §122.42(e)(5)(ii), and the rules found at 30 TAC §321.36(c) or §321.47(f)(3) of this title. This approach allows changes to the NMP to occur at the facility at any time, and adjustments can be made in the implementation of the plan.

The adopted rules include water quality-based limitations to control all pollutants that could be discharged at a level that will cause, or have the reasonable potential to cause, or contribute to an excursion above any state water quality standard. This includes water quality-based effluent limitations for the production area and land application area of dairy operations. All recordkeeping and annual reporting requirements are under new §321.48 and §321.49.

New §321.48, *Land Application of Dairy Waste*, establishes rules to provide authorization to a dairy operation to directly land apply dairy waste, and transfer and receive third-party (i.e., off-site) dairy waste to apply to land that is under the control of a permitted or an unpermitted AFO.

New §321.48(a), *Definitions*, establishes definitions for dairy operation, dairy waste, and emergency conditions. The definition of dairy waste maintains the statutory definition with additional language added to clarify the regulatory focus on liquid dairy waste and exclusion of solid and semi-solid forms of dairy waste. The definition of “emergency conditions” is consistent with the statutory definition in Texas Government Code §551.045(b)(2), with the addition of ice storm, mechanical failure, and any other situation deemed by the executive director to qualify as an emergency.

New §321.48(b), *Duration of Authorization*, limits the duration of the authorization for land application of dairy waste from the first day of the emergency condition(s) to seven (7) calendar days after the emergency condition has ended. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

New §321.48(c), *Purpose*, establishes that new section §321.48 provides authorization to a dairy operation to land apply dairy waste, including dairy waste received from a third party, under emergency conditions to land that is under the control of a dairy CAFO or unpermitted AFO.

New §321.48(d), *Applicability*, establishes a requirement for the owner or operator of a dairy operation that generates dairy waste and the owner or operator of the dairy

operation that accepts dairy waste to comply with all the requirements of new section §321.48.

New §321.48(e), *General Requirements*, establishes the requirements for land application of dairy waste by CAFOs and AFOs. The Section references §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements) and the AFO requirements in §§321.47(f) relating to land application, (h) nutrient utilization plans, and (i) record keeping requirements. The adopted rule requires that dairy waste be evenly applied to fields that are vegetated with actively growing crops, or incorporated into the soils if applied to a fallow field. To protect surface and groundwater, the adopted rule would limit the maximum application rate to 2,000 gallons per acre per year, require setbacks for wells and surface waters, and prohibit land application in the 100-year floodplain. To reduce the occurrence of nuisance odors, land application of dairy waste is prohibited within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park. Lastly, to prevent over-application of nutrients, land application of dairy waste is prohibited on land application areas that have elevated nutrient levels or land management units (LMUs) with a nutrient utilization plan.

New §321.48(f), *Notification Requirements*, establishes requirements for a dairy operator to notify the appropriate TCEQ Regional Office orally within 24 hours or by the next business day, and in writing on paper, electronic mail or other electronic

method approved by the executive director within 14 days, of land applying dairy waste. The adopted new section establishes requirements for the written notification to contain the location of the disposal area; a description of the emergency condition; the date that dairy waste was applied; volume applied (gallons, or acre-feet); proof of authorization of the use of the field for dairy waste disposal if third-party (offsite) land was used; the duration of the emergency condition and if additional time will be needed; and a signed certification.

New §321.48(g), *Recordkeeping Requirements*, establishes requirements for a dairy owner or operator that land applies dairy waste to include certain information in the land application record in the onsite Pollution Prevention Plan (PPP). At a minimum, it must include a log of dairy waste land applied, weather conditions, documentation of any discharge of dairy waste, and a copy of notification(s) to the executive director.

New §321.48(h), *Discharge Notification*, establishes that requirements in §§321.44(a)(1) through (6) apply to the discharge of dairy waste.

New §321.48(i), *Discharge Monitoring*, establishes a requirement for the dairy operator to sample all discharges of dairy waste to surface water in the state and comply with the discharge monitoring in §321.44(b).

New §321.48(j), *Annual Reporting*, establishes a requirement for a dairy operator land applying dairy waste to include the information required by 321.48(g) in the annual

report required by 321.36(g) that is due to TCEQ on March 31, of each year. The adopted new subsection also establishes a requirement for dairy operators not authorized by permit to submit information regarding the total dairy waste (gallons, or acre-feet) generated and land applied by the same due date.

New §321.49, *Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation*, establishes rules to provide authorization to a dairy operation to store dairy waste in an RCS during emergency conditions.

New §321.49(a), *Purpose*, establishes that §321.49 provides authorization to a dairy operation to store dairy waste in an RCS or playa under emergency conditions and subsequently land apply the dairy waste.

New §321.49(b), *Applicability*, establishes that the provisions of §321.49 apply to an owner or operator of a dairy operation that stores dairy waste in an RCS, or playa that meets the special requirements for discharges of §321.41.

New §321.49(c), *Duration of Authorization*, limits the Authorization to put dairy waste in an RCS from the first day of the emergency condition(s) to seven (7) calendar days after the emergency condition ends. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

New §321.49(d), *Discharge Restrictions*, establishes a prohibition on the discharge or disposal of dairy waste from a dairy operation into or adjacent to water in the state, except in accordance with new §321.49. The adopted section would establish a requirement for dairy waste generated by a dairy operation under this title to be retained and utilized in an appropriate and beneficial manner. The adopted section also establishes a requirement for disposal of dairy waste in an RCS to be subject to the effluent limitations in §321.37 and design requirements in §§321.38 and 321.42(c).

New §321.49(e), *Recordkeeping Requirements*, establishes the requirements for keeping records of dairy waste placed in an RCS or playa. Records include a log of monthly dairy waste received and stored at the AFO or CAFO.

New §321.49(f), *General Requirements*, establishes the requirements for disposal of dairy waste in an RCS or playa. Specifically, the adopted rule prohibits dairy waste storage in certain playas for compliance with TWC §26.048. The adopted rule also requires a dairy operation using an RCS for storage of dairy waste ensure that storage of dairy waste doesn't cause an unauthorized discharge from the RCS. The adopted rule also requires oral and written notification to the TCEQ Regional Office when dairy waste is stored in an RCS.

New §321.49(g), *Dairy Waste Transfer*, establishes provisions to allow a dairy operation to transfer dairy waste to another dairy operation site for land application or storage

in an RCS to use for irrigation when needed. The adopted rule requires the owner or operator generating the dairy waste to keep a record of all dairy waste (gallons, or acre-feet) transferred to another dairy operation, the date of transfer, as well as the name(s) and address(es) of the recipients of the dairy waste.

Additionally, the adopted rule establishes a requirement for the owner or operator generating the dairy waste to provide the laboratory report for total nitrogen, total phosphorus, and total potassium content of the dairy waste to the receiver of the dairy waste. Book values for dairy waste nutrient contents may be used because under emergency conditions there may not be sufficient time to collect and analyze dairy waste and manage the dairy waste in a timely manner.

New §321.49(h), *Dairy Waste Received*, establishes requirements for a dairy operator that receives dairy waste to comply with the land application requirements in §321.48 or this section for storage of dairy waste in an RCS.

New §321.49(i), *Annual Reporting*, requires all information under §321.49(e) in the annual report required by §321.36(g) that is due to the TCEQ by March 31 of each year. The adopted new subsection also establishes a requirement for dairy operators not authorized by permit to submit information regarding the total dairy waste (gallons, or acre-feet) generated and land applied by the same due date.

The adopted rule creates new Chapter 321, Subchapter Q to authorize land application of dairy waste on agriculture land that is not part of an AFO or CAFO.

New Section §321.401, *Purpose and Applicability*, establishes that new Subchapter Q provides authorization by rule for direct land application of dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization and that the requirements of new Subchapter Q would apply to the entity or entities land applying the dairy waste and the owners of the land application area.

New §321.403, *Dairy Waste Management Alternatives*, lists options in addition to the adopted Sections 321.48, 321.49 and Subchapter Q, that a person or entity may use to manage dairy waste during emergency conditions. The section includes options such as direct land application to lands authorized under a Texas Pollutant Discharge Elimination System (TPDES) permit or Texas Land Application permit (TLAP) amended to include dairy waste management, disposal at a permitted solid waste landfill, disposal via a permitted injection well, hauling or discharging to a permitted domestic wastewater collection system with written consent from the plant operator or owner, or use as animal feed.

New §321.405, *Definitions*, establishes definitions for agronomic rate, agricultural land, dairy operation, dairy waste, emergency conditions, land application, and water in the state. The definition of dairy waste maintains the statutory definition with additional



language added to clarify the regulatory focus on liquid dairy waste and exclusion of solid and semi-solid forms of dairy waste. The definition of “emergency conditions” is consistent with the statutory definition in Texas Government Code §551.045(b)(2), with the addition of ice storm, mechanical failure, and any other situation deemed by the executive director to qualify as an emergency. ~~The definition of “water in the state” is updated to reflect the change in name of the “Gulf of Mexico” to the “Gulf of America.”~~

New §321.407, *Protection of Surface Water and Groundwater Quality*, establishes that new Subchapter Q does not authorize the discharge of dairy waste into water in the state, including surface water and groundwater, nor does it authorize any contamination of groundwater.

New §321.409, *General Requirements*, establishes requirements for land application of dairy waste under emergency conditions by owners and operators of agricultural operations that may receive dairy waste for beneficial use, and that the property owner consent would be required for all land application activities. The adopted rule requires that dairy waste be land applied to fields that are vegetated with actively growing crops, or incorporated into the soils if applied to a fallow field. To protect surface and groundwater, the adopted rule would limit the maximum application rate to 2,000 gallons per acre per year, require setbacks for wells and surface waters, prohibit land application in the 100-year floodplain, prohibit land application during rainfall events or to frozen or saturated ground, and prohibit land application to soils with shallow groundwater. To reduce the occurrence of nuisance odors, land application of dairy

waste is prohibited within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

New §321.411, *Notification*, establishes requirements for the person or entity applying dairy waste or the owner of the land application areas to notify the appropriate TCEQ Regional Office upon land application of dairy waste. The adopted rule requires oral notification to occur within 24 hours of application and written notification within 14 days. The adopted rule includes information to assist landowners with identifying the regional office contact information. The adopted rule requires the notification to include the date, time, location, volume, and the applicable emergency condition.

New §321.413, *Duration of Authorization*, limits the authorization for land application of dairy waste under new Subchapter Q from the first day of the emergency condition(s) to a time period of seven (7) calendar days beyond the end of the emergency condition. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

### **Final Regulatory Impact Determination**

TCEQ reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC) §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not

meet the definition of a “Major environmental rule” as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a “Major environmental rule” adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A “Major environmental rule” is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The Texas Legislature enacted HB 692, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), and THSC, Chapter 361 (the Solid Waste Disposal Act), Subchapter C (Permits) by adding §26.0481 to the TWC and §361.1215 of the THSC, which provides an additional regulatory and legal method for dairy AFOs to dispose of dairy waste, which HB 692 defines as milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation or at a CAFO, as applicable.

HB 692 required TCEQ to adopt new TCEQ rules to implement HB 692's provisions.

HB 692 grants TCEQ rulemaking authority to create an authorization by rule for land application of dairy waste, and to adopt new rules allowing the disposal of dairy waste from a CAFO into an RCS, including a lagoon or playa, and authorize land application by irrigation associated with that disposal.

As the Bill Analysis from the Environmental Regulation Committee of the Texas House of Representatives makes clear, the 88th Texas Legislature enacted HB 692 with the aim of providing Texas dairies with another disposal method for unused milk or dairy waste. In Texas, milk or dairy waste is disposed of in a disposal well, of which there are only two locations in Texas for dairy waste. According to the Texas Association of Dairymen, the average cost to dispose a truckload of milk, about 50,000 pounds, is around \$3,000, which is a costly burden for dairy operators in Texas. Whereas, land application of dairy waste has proven to be an effective fertilizer, and based on current research, milk itself can improve soil health, if applied properly. This is due to milk's ability to provide nutrients to plants and stimulate the growth of beneficial fungi by supplying sugar. HB 692 addressed these issues by amending TWC and THSC to provide for the authorization for certain land applications and disposal of dairy waste.

HB 692 requires TCEQ to issue both an authorization by rule for land application of dairy waste, that minimizes the risk of water quality impairment caused by the land application, prescribes the conditions under which an authorization is issued, such as

the duration of the authorization, the location of the land application area or unit, the maximum quantity or application rate of dairy waste that may be applied or disposed of under the authorization, the suggested agronomic application rate for the dairy waste, and best management practices (BMPs) for the handling and disposal of dairy waste.

HB 692 requires TCEQ, to the extent permitted by federal law, to adopt rules allowing the storage of dairy waste by an AFO into an RCS, including a lagoon or playa, and the land application by irrigation associated with that disposal. The rules must require BMPs and other conditions to ensure that the disposal of dairy waste into the RCS or its associated land application does not impair water quality.

In order to implement the provisions of HB 692, TCEQ adopts the addition of new §321.48 and §321.49 to the existing 30 TAC Chapter 321, Subchapter B rules allowing dairy operations to land apply dairy waste; and storage of dairy waste in an RCS, including a lagoon or playa, and irrigate dairy waste from the RCS to land application areas. TCEQ also adopts the addition of new 321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413 under new 30 TAC Chapter 321, Subchapter Q, allowing entities to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization.

Therefore, the specific intent of the adopted rulemaking is related to expanding the existing CAFO Rules with regulatory options for disposal of dairy waste, as defined in HB 692.

The adopted rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, does not come under a delegation agreement or contract with a federal program, and finally, is not being adopted under TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in HB 692 of the 2023 Texas legislative session and implements existing state law. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

### **Takings Impact Assessment**

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the adopted rulemaking is to implement the legislative amendments to the THSC and the TWC in HB 692 by amending TCEQ's CAFO Rules to expand the existing CAFO Rules with regulatory options for disposal of dairy waste, as defined in HB 692. The adopted rulemaking will substantially advance this stated purpose by adopting new rule language that provides for the authorization for certain land applications and disposal of dairy waste.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TCG, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the adopted rules is to implement HB 692 by providing for the authorization for certain land applications and disposal of dairy waste. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking would not cause a taking under TGC, Chapter 2007.



### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rulemaking includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring 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 adopted rules include that discharges must comply with water quality-based effluent limits; and that discharges which increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development.

The adopted rulemaking is consistent with the above goals and policies by requiring dairy waste disposal activities to be conducted in a manner that is protective of water quality and prohibits the discharge of dairy waste into water in the state.

Promulgation and enforcement of the rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules would be consistent with these CMP goals and policies, and the rule would not create or have a direct or significant adverse effect on any CNRAs.

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

#### **Public comment**

At the February 13, 2025 Agenda, the commission directed the executive director to specifically invite public comment on the proposal to authorize the dairy waste management activities only under emergency conditions, without THSC, §361.1215 and TWC, §26.0481 expressly stating that they apply only in such situations. The proposed rule package was revised accordingly prior to publication in the Texas Register.

The commission offered a public hearing on March 31, 2025. The 30-day comment period closed on March 31, 2025. No public comments were received by the commission.

## **SUBCHAPTER B: CONCENTRATED ANIMAL FEEDING OPERATIONS**

### **§321.48 and §321.49**

#### **Statutory Authority**

The new sections are adopted under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The adopted new sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

**§321.48. Land Application of Dairy Waste**

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Dairy Operation--An Animal Feeding Operation (AFO) confining cattle that have been or may be used for production of milk, or otherwise associated with a dairy, including cows, calves, and bulls.

(2) Dairy Waste--Milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation. For the purposes of this rule, dairy waste does not include solid or semi-solid milk products.

(3) Emergency Conditions - Instances where dairy waste is generated at any point along the dairy supply chain due to a reasonably unforeseeable situation, including but not limited to:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice, or snowstorm;

(B) power failure, transportation failure, mechanical failure, or interruption of communication facilities;

(C) epidemic;

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or

(E) any other situation deemed by the executive director to qualify as an emergency.

(b) Duration of Authorization. Authorization to land apply dairy waste on LMUs expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

(c) Purpose. This section provides authorization to a dairy operation to directly land apply dairy waste, including dairy waste received from a third-party, under emergency conditions to land that is under the control of a permitted CAFO or unpermitted AFO.

(d) Applicability. This section applies to the owner or operator of a dairy operation that generates or accepts third-party dairy waste that is land applied under emergency conditions.

(e) General Requirements. The following requirements apply to land application of dairy waste:

(1) Land application of dairy waste must comply with the requirements of §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements) for a CAFO or §§321.47(f), (h), and (i) of this title (relating to Land Application, Nutrient Utilization Plans, and Recordkeeping Requirements, respectively) for an AFO.

(2) Discharge of dairy waste into water in the state from a land management unit (LMU) is prohibited.

(3) Land application practices shall be maintained to minimize ponding or puddling of the dairy waste on the site and prevent the occurrence of nuisance conditions.

(4) Land application of dairy waste shall not occur when the ground is frozen or saturated or during rainfall events.

(5) Dairy waste shall not be land applied within the well buffers identified in §321.38(b) of this title (relating to Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)).

(6) Land application of dairy waste shall not occur within 100 feet of any surface water in the state.

(7) Land application of dairy waste shall not occur within a vegetative buffer strip required by §321.40(h) of this title.

(8) Dairy waste shall not be land applied within the 100-year floodplain.

(9) Dairy waste shall not be land applied to soils with shallow, perched or seasonal water tables.

(10) Dairy waste may only be applied to fields that are vegetated with actively growing crops, hay or vegetation, or if to a fallow field, the dairy waste shall be incorporated into the soils within 48 hours of land application.

(11) Dairy waste application shall be limited to a maximum of 2,000 gallons per acre per year.

(12) Dairy waste shall be applied evenly to the soils.

(13) Dairy waste shall not be land applied within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

(14) There shall be no land application of dairy waste to an LMU if the LMU is required to have a Nutrient Utilization Plan (NUP) per §321.40(k)(3) of this title.

(15) There shall be no land application of dairy waste to an LMU that has or reaches a critical soil test phosphorus (P) level of greater than or equal to 500 ppm, with a P – Index rating of “High” or “Very High”.

(f) Notification Requirements. The dairy operator shall notify the appropriate TCEQ Regional Office orally within 24 hours of land application of dairy waste or by the next business day, and in writing within 14 days of the land application of the dairy waste. Written notification may be on paper, electronic mail, or other electronic method as prescribed by the executive director. The notification shall include the following information:

(1) the location of the land where the dairy waste was land applied, including the address of the area, latitude and longitude, or a site map;

(2) the applicable emergency condition;



(3) the date that dairy waste was land applied;

(4) the volume (gallons, or acre-feet) of dairy waste land applied;

(5) proof of authorization of the use of the field for land application of dairy waste if third-party land was used;

(6) the duration of the emergency condition and if additional time will be needed to complete the land application; and

(7) a certification signed by the dairy operator that the requirements of this subchapter were complied with during the land application of dairy waste.

(g) Recordkeeping Requirements. A dairy owner or operator that land applies dairy waste shall include the following information in the Pollution Prevention Plan (PPP) required in §321.46(d) of this title:

(1) a log of all dairy waste land applied at the AFO or CAFO updated at least monthly. Such records must include the following information:

(i) date of dairy waste application to each LMU;

(ii) location of the specific LMU and the volume (gallon, or acre-feet) applied during each application event;

(iii) acreage of each individual crop on which dairy waste is applied; and

(iv) weather conditions (such as the temperature, precipitation, and cloud cover) during the land application and 24 hours before and after the land application;

(2) documentation describing any discharge of dairy waste into water in the state including the date, time, volume of overflow (gallons, or acre-feet), a copy of the notification(s) provided to the regional office, and sample analysis results associated with the discharge; and

(3) copies of all notifications to the executive director, including any made to a Texas Commission on Environmental Quality regional office, as required by this subchapter, a permit, or authorization.

(h) Discharge Notification. Discharge notification requirements in §§321.44(a)(1) through (6) of this title shall apply to the discharge of dairy waste.

(i) Discharge Monitoring. The dairy operator shall sample all discharges of dairy waste to surface water in the state and comply with the discharge monitoring in §321.44(b) of this title.

(j) Annual Reporting. The dairy operator land applying dairy waste shall include the information required by §321.48(g) in the annual report as indicated in §321.36(g) of this title. Dairy operators that are not authorized by permit, and therefore not required to submit an annual report, must mail the following information to the appropriate TCEO Regional Office that is servicing the area where the dairy operation is located by March 31 of each year:

(1) estimated total volume of dairy waste (in gallons) generated during the reporting period; and

(2) total volume of dairy waste (gallons, or acre-feet) land applied during the reporting period.

**§321.49. Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation**

(a) Purpose. This section provides authorization to a dairy operation to store dairy waste during emergency conditions in a retention control structure (RCS) or playa and subsequently land apply the dairy waste for beneficial use.

(b) Applicability. This section applies to an owner or operator of a dairy operation that stores dairy waste in an RCS or playa that meets the requirements of §321.41 of this title (relating to Special Requirements for Discharges to a Playa).

(c) Duration of Authorization. Authorization to store dairy waste in a retention control structure(s) expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

(d) Discharge Restrictions.

(1) There shall be no discharge or disposal of dairy waste from a dairy operation into or adjacent to water in the state, except in accordance with this section. Dairy waste generated by a dairy operation under this subchapter shall be retained and utilized in an appropriate and beneficial manner as provided by this section.

(2) The storage of dairy waste in an RCS is subject to the effluent limitations in 30 TAC §321.37 and the RCS design requirements in 30 TAC §321.38 and 30 TAC §321.42(c) of this title (relating to Effluent Limitations for Concentrated Animal Feeding Operation (CAFO) Production Areas, Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations, and

Requirements Applicable to the Major Sole-Source Impairment Zone to maintain a margin of safety in the RCS).

(e) Recordkeeping Requirements. A dairy owner or operator that stores dairy waste in an RCS under emergency conditions shall include a log of all dairy waste received and stored at the AFO or CAFO, updated at least monthly, in the Pollution Prevention Plan (PPP) required in §321.46(d) of this title.

(f) General Requirements.

(1) Storage of dairy waste in a playa shall comply with §321.41 of this title.

(2) A dairy operation using an RCS for storage of dairy waste shall ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the design rainfall event, and the margin of safety for CAFOs located in a major sole-source impairment zone.

(3) The operator shall not store dairy waste in an RCS that is in danger of imminent overflow from chronic or catastrophic rainfall or catastrophic conditions.

(4) The dairy operator shall notify the appropriate TCEQ Regional Office orally within 24 hours, or by the next business day, of storing dairy waste in an RCS.

The following information shall be provided during the oral notification:

(A) the dairy's authorization status: if the dairy is permitted or not permitted and, if permitted, the permit number;

(B) the name and address of the owner and/or operator;

(C) the name and location of the dairy;

(D) the site-specific emergency condition(s); and

(E) the duration of the emergency conditions and if additional time will be needed to manage dairy waste either by land application, placement in an RCS, or transfer to another dairy.

(5) Written notification. The dairy operator shall provide written notification to the appropriate TCEQ Regional Office within 14 days of storing dairy waste in an RCS. Written notification may be on paper, electronic mail, or other electronic method as prescribed by the executive director. The following information shall be provided, in addition to the information required for oral notification, on a form that is prescribed by the executive director:

(A) location and name of the RCS that was used to store the dairy waste, including the latitude and longitude;

(B) the date(s) that the dairy waste was put into an RCS;

(C) the volume of dairy waste (gallons, or acre-feet) that was stored in an RCS;

(D) if there was any discharge of dairy waste from the RCSs, and the estimated volume of the discharge (gallons, or acre-feet); and

(E) a USGS topographical Map and a Site and Runoff Control Map identifying where the dairy waste was stored.

(g) Dairy Waste Transfer. A dairy operator may transfer dairy waste to another dairy site for land application or storage in an RCS to use for irrigation when needed.

(1) The owner or operator generating the dairy waste shall keep a record of the date and volume of dairy waste (gallons, or acre-feet) that is transferred to another dairy.

(2) The owner or operator generating the dairy waste shall provide the laboratory report for total nitrogen, total phosphorus, and total potassium content of the dairy waste to the receiver of the dairy waste. If the laboratory report is not available, the book value of dairy waste from the Texas A & M AgriLife Extension Services shall be used in lieu of the laboratory report.

(3) The owner or operator generating the dairy waste shall keep records of the name(s) and address(s) of the recipient(s) of the dairy waste.

(h) Dairy Waste Received. A dairy operator that receives dairy waste shall comply with:

(1) §321.48 of this title (relating to Land Application of Dairy Waste) if dairy waste is land applied, or

(2) the requirements of this section if dairy waste is stored in an RCS.

(i) Annual Reporting. The dairy operator that places dairy waste in an RCS under emergency conditions shall include the information required by §321.49(e) in the annual report required by §321.36(g) of this title. Dairy operators that are not authorized by permit, and therefore not required to submit an annual report, must mail the following information to the appropriate TCEQ Regional Office that is servicing the area where the dairy operation is located by March 31 of each year:



(1) estimated total volume of dairy waste (in gallons) stored during the reporting period; and

(2) total volume of dairy waste (gallons, or acre-feet) land applied during the reporting period.

**SUBCHAPTER Q: LAND APPLICATION OF DAIRY WASTE AUTHORITY**

**§321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413**

**Statutory Authority**

The new sections are adopted under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The adopted new sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

**§321.401. Purpose and Applicability**

This subchapter authorizes by rule direct land application of dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEO authorization. The requirements of this subchapter apply to the entity or entities land applying the dairy waste and the owners of the land application area.

**§321.403. Dairy Waste Management Alternatives**

A person or entity that needs to manage dairy waste under emergency conditions may use the options below:

(1) land application of dairy waste on agricultural land in accordance with this subchapter;

(2) retention and land application of dairy waste at an animal feeding operation in accordance with 30 TAC §§ 321.48 and 321.49 of this title;

(3) direct land application to agricultural lands authorized under a Texas Pollutant Discharge Elimination System permit or Texas Land Application permit amended to include dairy waste management in their permit;

(4) disposal at a permitted solid waste landfill;

(5) disposal via a permitted injection well;

(6) hauling or discharging to a permitted domestic wastewater collection system with written consent from the plant operator or owner;

(7) use as animal feed in accordance with Texas Agriculture Code, Chapter 141 (relating to Commercial Feed); or

(8) other beneficial uses approved by the executive director.

#### **§321.405. Definitions**

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

(1) Agronomic rate - The dairy waste application rate designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the dairy waste that passes below the root zone of the crop or vegetation grown on the land.

(2) Agricultural land - Cropland, grassland, rangeland, pasture, or other specific land areas that are solely devoted to being used for growing crops, hay, or forage.

(3) Dairy Operation - Any entity involved in milk production, collection, transportation, receiving, transfer, or processing.

(4) Dairy Waste - Milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation. For the purposes of this rule, dairy waste does not include solid or semi-solid milk products.

(5) Emergency Conditions - Instances where dairy waste is generated at any point along the dairy supply chain due to a reasonably unforeseeable situation, including but not limited to:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice, or snowstorm;

(B) power failure, transportation failure, mechanical failure, or interruption of communication facilities;

(C) epidemic;

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or

(E) any other situation deemed by the executive director to qualify as an emergency.

(6) Land application--The act of applying dairy waste to agricultural land for beneficial use by crops, hay, or forage. Beneficial use includes the addition of nutrients from dairy waste, such as nitrogen and phosphorous, and the water content of dairy waste used to enhance moisture content of the soil.

(7) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico **America**, 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.

**§321.407. Protection of Surface Water and Groundwater Quality**

(a) The discharge of dairy waste into water in the state, including surface waters and groundwater, is prohibited.

(b) Land application of dairy waste shall not contaminate groundwater.

**§321.409. General Requirements**

The following requirements apply to land application of dairy waste on agricultural land during emergency conditions. Property owner consent is required for all land application activities.

(1) Dairy waste shall not be land applied within 100-feet of any surface water in the state.

(2) Dairy waste shall not be land applied within 500 feet of a public drinking water well or within 150 feet of any other water well.

(3) Dairy waste shall not be land applied within 750 feet of an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

(4) Dairy waste shall not be land applied within the 100-year floodplain.

(5) Dairy waste shall not be land applied when the ground is frozen or saturated or during rainfall events.

(6) Dairy waste may only be applied to fields that are vegetated with actively growing crops, hay, or forage, or if to a fallow field, the dairy waste shall be incorporated into the soils within 48 hours of land application.

(7) Dairy waste application shall be limited to a maximum of 2,000 gallons per acre per year. For a full tanker truck load of 6,000 to 8,000 gallons, the contents must be applied over a minimum of three to four acres of land to comply with this requirement.

(8) Land application practices shall be maintained to minimize ponding or puddling of the dairy waste on the site and prevent the occurrence of nuisance conditions.



(9) Dairy waste must be conducive to land application (i.e., in a form that is spreadable and can be incorporated into the soil to avoid piling).

(10) Dairy waste shall not be land applied to soils with shallow, perched, or seasonal water tables.

### **§321.411. Notification**

(a) The person or entity applying dairy waste, or the owner of the land application areas, shall notify the appropriate TCEQ Regional Office upon land application of dairy waste. Oral notification must occur within 24 hours of land application and written notification within 14 days. Contact information for TCEQ Regional Offices is available in the TCEQ publication number M-070 titled “Area, Region, and Watermaster Offices” available on the TCEQ website at: [www.tceq.texas.gov/publications](http://www.tceq.texas.gov/publications).

(b) The notification must include the following information:

(1) the location where the dairy waste was land applied including the address, latitude and longitude, or a map;

(2) the applicable emergency condition;

(3) the date and time that dairy waste was land applied;

(4) the volume (gallons) of dairy waste that was land applied; and

(5) the duration of the emergency conditions and if additional time will be needed to complete the land application on agricultural land.

**§321.413. Duration of Authorization**

Authorization to land apply dairy waste on agricultural land expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

## AGENDA ITEM REQUEST

for Rulemaking Adoption

**AGENDA REQUESTED:** July 9, 2025

**DATE OF REQUEST:** June 20, 2025

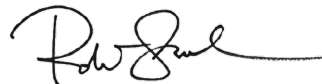
**INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED:** Gwen Ricco, Rule/Agenda Coordinator, (512) 239-2678

**CAPTION: Docket No. 2023-1229-RUL.** Consideration of the adoption of amendment to 30 TAC Chapter 321, Control of Certain Activities by Rule, Subchapter B, Concentrated Animal Feeding Operations; new Chapter 321, Subchapter Q, Land Application of Dairy Waste Authority; and amended Sections 335.2 and 335.6 of 30 TAC Chapter 335, Industrial Solid Waste and Municipal Hazardous Waste to implement House Bill 692, 88th Legislature.

The adopted rules amend 30 TAC Chapter 321, Subchapter B, by adding new Sections 321.48 and 321.49, which allow dairy operations to directly land apply dairy waste to land application areas and dispose of dairy waste in a retention control structure, including a lagoon or playa, and irrigate land application areas with dairy waste from the retention control structure. The rulemaking also amends 30 TAC Chapter 321 by adding new Subchapter Q, Land Application of Dairy Waste Authority, which allows entities to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization. Finally, the rulemaking exempts these activities from the permitting and notification requirements in 30 TAC Chapter 335. The proposed rules were published in the February 28, 2025, issue of the *Texas Register* (50 TexReg 1632). (Shannon Gibson, Michael Parr; Rule Project No. 2023-139-321-OW)



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Director



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Division Deputy Director

\_\_\_\_\_  
Gwen Ricco  
Agenda Coordinator

Copy to CCC Secretary? NO ☐ YES ☒

# Texas Commission on Environmental Quality

## Interoffice Memorandum

**To:** Commissioners **Date:** June 20, 2025

**Thru:** Laurie Gharis, Chief Clerk  
Kelly Keel, Executive Director

**From:** *cm* Cari-Michel La Caille, Director  
Office of Water

**Docket No.:** 2023-1229-RUL

**Subject:** Commission Approval for Rulemaking Adoption  
Chapter 321 Control of Certain Activities by Rule  
Subchapter B – Concentrated Animal Feeding Operations  
Subchapter Q – Land Application of Dairy Waste Authority  
Chapter 335 Industrial Solid Waste and Municipal Hazardous Waste  
Land Application and Disposal of Dairy Waste in Control Facility  
Rule Project No. 2023-139-321-OW

### Background and reason(s) for the rulemaking:

This rulemaking implements House Bill (HB) 692, 88th Regular Legislative Session, which added §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC) and §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC).

Through additions to THSC and TWC, HB 692 grants Texas Commission on Environmental Quality (TCEQ) rulemaking authority to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application; 2) adopt rules allowing the disposal of dairy waste from dairy operations, as defined in the rules to include permitted concentrated animal feeding operations (CAFOs) and unpermitted animal feeding operations (AFOs), into a control or retention facility, including a lagoon or playa; and, 3) authorize land application by irrigation associated with that disposal.

The rule additions provide other avenues to dairy operators and less costly means of disposing of dairy waste within existing dairy operations during emergency conditions, as defined in the rule in similar manner to Texas Government Code 551.045(b)(2).

### Scope of the rulemaking:

#### A.) Summary of what the rulemaking will do:

This rulemaking amends 30 Texas Administrative Code (TAC) to add new subsections §321.48 and §321.49 to 30 TAC Chapter 321, Subchapter B, *Concentrated Animal Feeding Operations*, to allow dairy operations to land apply dairy waste directly to land application areas and store dairy waste in a retention control structure (RCS), including a lagoon or playa, and irrigate land application areas with dairy waste from the RCS.

New subsections §321.48 and §321.49 require dairy operators to update the site-specific nutrient management plan (NMP) should the need arise for land application of dairy waste and to irrigate land application areas based on the application rates that are determined in accordance with the narrative rate approach from both Title 40 Code of Federal Regulations (CFR) §122.42(e)(5)(ii), and 30 TAC §321.36(c). This approach allows changes to the NMP to occur at the facility at any time, and adjustments can be made in the implementation of the plan. The new subsections include requirements to protect surface water and groundwater quality, ensure benefits to vegetation, and prevent nuisance conditions.

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This rulemaking also adds new subsections §321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413 under new 30 TAC Chapter 321, Subchapter Q, *Land Application of Dairy Waste Authority*, which allows entities, including landowners and any person along the dairy supply chain (milk haulers, milk processing plant, and milk bottling facilities) to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an AFO or any other TCEQ authorization. The rule establishes requirements for land application activities and a requirement to obtain the property owner's consent for use of an application site.

This new subchapter allows any milk plant, receiving station, transfer station, milk tank truck, dairy product manufacturer, and frozen dessert manufacturer located and operating in the State of Texas that are regulated by the Texas Department of State Health Services under 25 TAC Chapter 217, *Milk and Dairy*, Subchapter F, *Permits, Fees and Enforcement*, to deliver dairy waste to landowners during emergency conditions for beneficial use. Dumping of dairy waste is prohibited by this rule.

Additionally, this rulemaking amends 30 TAC Chapter 335 to exempt these activities from the permitting requirement in §335.2 and the notification requirement in §335.6.

**B.) Scope required by federal regulations or state statutes:**

Rules adopted under state statutes in THSC, §361.1215 must:

- authorize land application of dairy waste by rule;
- minimize the risk of water quality impairment caused by the land application; and
- prescribe the conditions under which an authorization is issued, including the duration, location, maximum quantity or application rate, suggested agronomic application rate, and best management practices for handling and disposal of the dairy waste.

Rules adopted under state statutes in TWC, §26.0481 must:

- authorize the disposal of dairy waste from a dairy operation into a RCS, including a lagoon or playa;
- authorize the land application by irrigation associated with that disposal;
- include requirements that minimize the risk of water quality impairment caused by the disposal of dairy waste into the RCS and by the land application by irrigation associated with that disposal; and
- require best management practices to ensure that the disposal of dairy waste into the RCS does not impair water quality.

**C.) Additional staff recommendations that are not required by federal rule or state statute:**

Though not specifically directed by the statutes added by HB 692, the adopted rule provides a definition of “emergency conditions,” which is patterned after Government Code §551.045(b)(2), under which dairy waste disposal and land application can take place.

**Statutory authority:**

- TWC, §26.121, which makes it unlawful to discharge pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission;
- TWC, §26.0481, which provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal; and
- THSC, §361.1215, which provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

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**Effect on the:**

**A.) Regulated community:**

Following adoption, AFO and CAFO dairy operations will have authorization to store dairy waste and irrigate to land application areas. Dairy CAFOs must update the site-specific NMP to determine the application rates of nutrients from all sources; revise the site-specific odor control plan; and implement best management practices for the RCS(s) and land application areas to prevent water quality impairment. Additional laboratory analysis fees may be required for wastewater that includes dairy waste, and soil testing of the land application areas that will or have received the dairy waste.

Non-AFO/CAFO agricultural operations that are not currently regulated by TCEQ would have to comply with the new regulations in Subchapter Q if they propose to land apply dairy waste, and are responsible for any violations.

**B.) Public:**

There is the potential for air quality/odor complaints from properties adjacent to the control or retention facilities that store dairy waste or the dairy waste land application areas.

**C.) Agency programs:**

The Water Quality Division (WQD) is required to develop rules and update 30 TAC Chapter 321, Subchapter B by adding new subsections §321.48 and §321.49, and adding new Subchapter Q, which includes new subsections §321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413. The Office of Compliance and Enforcement will have to conduct investigations, respond to complaints, and receive notifications when dairy waste is disposed of in a control or retention facility and/or land applied. The Office of Waste is updating §335.2 and §335.6 in this rulemaking to exclude dairy waste from the permitting and notification requirements.

**Stakeholder meetings:**

Updates on this rulemaking were provided at the quarterly Water Quality Advisory Work Group (WQAWG) meetings hosted by TCEQ on October 24, 2023; January 16, 2024; April 16, 2024; July 16, 2024; October 15, 2024, January 21, 2025, and April 15, 2025. Updates will continue to be provided at subsequent WQAWG meetings as needed.

**Public Involvement Plan:**

A Public Involvement Plan is required for this rulemaking and has been prepared.

**Alternative Language Requirements:**

Alternative Language Requirements apply for this rulemaking (Spanish).

**Public comment:**

At the February 13, 2025 Agenda, the commission directed the executive director to specifically invite public comment on the proposal to authorize the dairy waste management activities only

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under emergency conditions, without THSC, §361.1215 and TWC, §26.0481 expressly stating that they apply only in such situations. The proposed rule package was revised accordingly prior to publication in the *Texas Register*.

The rule was published in the *Texas Register* on February 28, 2025. The commission held a hybrid public hearing on March 31, 2025. The 30-day public comment period closed on the same date. No public comments were received.

**Significant changes from proposal:**

The definition for Water in the State was updated to specify “Gulf of America” under new §321.405.

**Potential controversial concerns and legislative interest:**

There are no anticipated controversial concerns or legislative interest expected, outside of interest in providing other avenues to dairy operators and less costly means of disposing of dairy waste within existing dairy operations during emergency conditions.

**Will this rulemaking affect any current policies or require development of new policies?**

This rulemaking does not have any effect on current policies but would create a new mechanism (new §321.48, §321.49, §321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413) for dairy operations to dispose of dairy waste during emergency conditions.

**What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?**

This rulemaking is required to implement HB 692. If this rulemaking doesn’t go forward, TCEQ would not be compliant with state statute.

**Key points in the adoption rulemaking schedule:**

***Texas Register* proposal publication date:** February 28, 2025

**Anticipated adoption date:** July 9, 2025

**Anticipated *Texas Register* adoption publication date:** July 25, 2025

**Anticipated effective date:** July 31, 2025

**Six-month *Texas Register* filing deadline:** August 28, 2025

**Agency contacts:**

Shannon Gibson, Rule Project Manager, Water Quality Division, (512) 239-4284

Michael Parr, Staff Attorney, Environmental Law Division, (512) 239-0611

Gwen Ricco, Texas Register Rule/Agenda Coordinator, General Law Division, (512) 239-2678

**Attachments:**

HB 692

cc: Chief Clerk, 2 copies  
Executive Director's Office  
Patrick Lopez  
Krista Kyle  
Jessie Powell

Commissioners

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June 20, 2025

Re: Docket No. 2023-1229-RUL

Office of General Counsel

Shannon Gibson

Michael Parr

Gwen Ricco



AN ACT

relating to the authorization for certain land applications and disposal of dairy waste.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter C, Chapter 361, Health and Safety Code, is amended by adding Section 361.1215 to read as follows:

Sec. 361.1215. PERMISSIVE LAND APPLICATION OF DAIRY WASTE.

(a) In this section, "dairy waste" means milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation.

(b) Notwithstanding any other law, the commission shall issue an authorization by rule for land application of dairy waste.

(c) The commission shall adopt rules governing the land application of dairy waste authorized under this section.

(d) Rules adopted under Subsection (c) must:

(1) minimize the risk of water quality impairment caused by the land application; and

(2) prescribe the conditions under which an authorization is issued, including:

(A) the duration of the authorization;

(B) the location of the land application unit;

(C) the maximum quantity or application rate of dairy waste that may be applied or disposed of under the

authorization;

(D) the suggested agronomic application rate for the dairy waste or other beneficial uses of the dairy waste; and

(E) best management practices for the handling and disposal of dairy waste.

SECTION 2. Subchapter B, Chapter 26, Water Code, is amended by adding Section 26.0481 to read as follows:

Sec. 26.0481. DISPOSAL OF DAIRY WASTE IN RETENTION FACILITY. (a) In this section, "dairy waste" means milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced at a concentrated animal feeding operation.

(b) Notwithstanding any other law and to the extent permitted by federal law, the commission shall adopt rules under this section to allow:

(1) the disposal of dairy waste from a concentrated animal feeding operation into a control or retention facility, including a lagoon or playa, as that term is defined by Section 26.048; and

(2) the land application by irrigation associated with the disposal described by Subdivision (1).

(c) Rules adopted under Subsection (b) must:

(1) minimize the risk of water quality impairment caused by:

(A) the disposal of dairy waste into the control or retention facility; and

(B) the land application by irrigation

1 associated with the disposal described by Paragraph (A); and  
2 (2) require best management practices to ensure that  
3 the disposal of dairy waste into the control or retention facility  
4 does not impair water quality.

5 SECTION 3. Not later than March 1, 2024, the Texas  
6 Commission on Environmental Quality shall adopt rules necessary to  
7 implement Section 361.1215, Health and Safety Code, and Section  
8 26.0481, Water Code, as added by this Act.

9 SECTION 4. This Act takes effect September 1, 2023.

\_\_\_\_\_  
President of the Senate

\_\_\_\_\_  
Speaker of the House

I certify that H.B. No. 692 was passed by the House on April 28, 2023, by the following vote: Yeas 140, Nays 4, 2 present, not voting.

\_\_\_\_\_  
Chief Clerk of the House

I certify that H.B. No. 692 was passed by the Senate on May 11, 2023, by the following vote: Yeas 30, Nays 0.

\_\_\_\_\_  
Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

\_\_\_\_\_  
Governor

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the addition of new §§321.48, 321.49, 321.401, 321.403, 321.405, 321.407, 321.409, 321.411, and 321.413.

New §§321.48, 321.49, 321.401, 321.403, 321.407, 321.409, 321.411, and 321.413 are adopted without changes to the proposed text as published in the February 28, 2025, issue of the *Texas Register* (50 TexReg 1632) and, therefore, will not be republished.

New §321.405 is adopted with changes to the proposed text as published in the February 28, 2025, issue of the *Texas Register* (50 TexReg 1632) and, therefore, will be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

TCEQ is adopting amendments to 30 Texas Administrative Code (TAC) Chapter 321 (Control of Certain Activities by Rule), Subchapter B (Concentrated Animal Feeding Operations) and add new Subchapter Q (Land Application of Dairy Waste Authority) to implement House Bill (HB) 692, 88th Legislative Session, which added §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC) and §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC). The bill directs TCEQ to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application (THSC §361.1215); 2) adopt rules allowing the disposal of dairy waste from dairy operations either permitted as a concentrated animal feeding operation (CAFO) or unpermitted animal feeding operation (AFO) into a

control or retention facility, including a lagoon or playa (TWC §26.0481(b)(1)); and, 3) authorize land application by irrigation associated with that disposal (TWC §26.0481(b)(2)).

TCEQ is adopting new §321.48 and §321.49 to the CAFO rules in 30 TAC Chapter 321, Subchapter B, that allow dairy operations to land apply dairy waste directly to land application areas, or put dairy waste in a retention control structure (RCS), including a lagoon or playa, and subsequently irrigate land application areas with dairy waste from the RCS. These activities are only allowed under emergency conditions.

TCEQ adopts the addition of new §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, and 321.413 under new 30 TAC Chapter 321, Subchapter Q, that allow entities, including landowners and any person along the dairy supply chain (milk haulers, milk processing plant, and milk bottling facilities), to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization.

As part of this rulemaking, the commission is also adopting amendments of 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste) concurrently in this issue of the *Texas Register*.

### **Section by Section Discussion**

Information from the State Technical Standards of the Natural Resource Conservation Service (NRCS) for Nutrient Management Code 590 are included for guidance. The requirements of the new CAFO Rules mandate dairy operators to update the site-specific nutrient management plan (NMP) if commencing land application of dairy waste and to irrigate land application areas based on the application rates that are determined in accordance with the narrative rate approach from both Title 40 Code of Federal Regulations (CFR) §122.42(e)(5)(ii), and the rules found at 30 TAC §321.36(c) or §321.47(f)(3) of this title. This approach allows changes to the NMP to occur at the facility at any time, and adjustments can be made in the implementation of the plan.

The adopted rules include water quality-based limitations to control all pollutants that could be discharged at a level that will cause, or have the reasonable potential to cause, or contribute to an excursion above any state water quality standard. This includes water quality-based effluent limitations for the production area and land application area of dairy operations. All recordkeeping and annual reporting requirements are under new §321.48 and §321.49.

New §321.48, *Land Application of Dairy Waste*, establishes rules to provide authorization to a dairy operation to directly land apply dairy waste, and transfer and receive third-party (i.e., off-site) dairy waste to apply to land that is under the control of a permitted or an unpermitted AFO.

New §321.48(a), *Definitions*, establishes definitions for dairy operation, dairy waste, and emergency conditions. The definition of dairy waste maintains the statutory definition with additional language added to clarify the regulatory focus on liquid dairy waste and exclusion of solid and semi-solid forms of dairy waste. The definition of “emergency conditions” is consistent with the statutory definition in Texas Government Code §551.045(b)(2), with the addition of ice storm, mechanical failure, and any other situation deemed by the executive director to qualify as an emergency.

New §321.48(b), *Duration of Authorization*, limits the duration of the authorization for land application of dairy waste from the first day of the emergency condition(s) to seven (7) calendar days after the emergency condition has ended. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

New §321.48(c), *Purpose*, establishes that new section §321.48 provides authorization to a dairy operation to land apply dairy waste, including dairy waste received from a third party, under emergency conditions to land that is under the control of a dairy CAFO or unpermitted AFO.

New §321.48(d), *Applicability*, establishes a requirement for the owner or operator of a dairy operation that generates dairy waste and the owner or operator of the dairy



operation that accepts dairy waste to comply with all the requirements of new section §321.48.

New §321.48(e), *General Requirements*, establishes the requirements for land application of dairy waste by CAFOs and AFOs. The Section references §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements) and the AFO requirements in §§321.47(f) relating to land application, (h) nutrient utilization plans, and (i) record keeping requirements. The adopted rule requires that dairy waste be evenly applied to fields that are vegetated with actively growing crops, or incorporated into the soils if applied to a fallow field. To protect surface and groundwater, the adopted rule would limit the maximum application rate to 2,000 gallons per acre per year, require setbacks for wells and surface waters, and prohibit land application in the 100-year floodplain. To reduce the occurrence of nuisance odors, land application of dairy waste is prohibited within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park. Lastly, to prevent over-application of nutrients, land application of dairy waste is prohibited on land application areas that have elevated nutrient levels or land management units (LMUs) with a nutrient utilization plan.

New §321.48(f), *Notification Requirements*, establishes requirements for a dairy operator to notify the appropriate TCEQ Regional Office orally within 24 hours or by the next business day, and in writing on paper, electronic mail or other electronic

method approved by the executive director within 14 days, of land applying dairy waste. The adopted new section establishes requirements for the written notification to contain the location of the disposal area; a description of the emergency condition; the date that dairy waste was applied; volume applied (gallons, or acre-feet); proof of authorization of the use of the field for dairy waste disposal if third-party (offsite) land was used; the duration of the emergency condition and if additional time will be needed; and a signed certification.

New §321.48(g), *Recordkeeping Requirements*, establishes requirements for a dairy owner or operator that land applies dairy waste to include certain information in the land application record in the onsite Pollution Prevention Plan (PPP). At a minimum, it must include a log of dairy waste land applied, weather conditions, documentation of any discharge of dairy waste, and a copy of notification(s) to the executive director.

New §321.48(h), *Discharge Notification*, establishes that requirements in §§321.44(a)(1) through (6) apply to the discharge of dairy waste.

New §321.48(i), *Discharge Monitoring*, establishes a requirement for the dairy operator to sample all discharges of dairy waste to surface water in the state and comply with the discharge monitoring in §321.44(b).

New §321.48(j), *Annual Reporting*, establishes a requirement for a dairy operator land applying dairy waste to include the information required by 321.48(g) in the annual

report required by 321.36(g) that is due to TCEQ on March 31, of each year. The adopted new subsection also establishes a requirement for dairy operators not authorized by permit to submit information regarding the total dairy waste (gallons, or acre-feet) generated and land applied by the same due date.

New §321.49, *Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation*, establishes rules to provide authorization to a dairy operation to store dairy waste in an RCS during emergency conditions.

New §321.49(a), *Purpose*, establishes that §321.49 provides authorization to a dairy operation to store dairy waste in an RCS or playa under emergency conditions and subsequently land apply the dairy waste.

New §321.49(b), *Applicability*, establishes that the provisions of §321.49 apply to an owner or operator of a dairy operation that stores dairy waste in an RCS, or playa that meets the special requirements for discharges of §321.41.

New §321.49(c), *Duration of Authorization*, limits the Authorization to put dairy waste in an RCS from the first day of the emergency condition(s) to seven (7) calendar days after the emergency condition ends. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

New §321.49(d), *Discharge Restrictions*, establishes a prohibition on the discharge or disposal of dairy waste from a dairy operation into or adjacent to water in the state, except in accordance with new §321.49. The adopted section would establish a requirement for dairy waste generated by a dairy operation under this title to be retained and utilized in an appropriate and beneficial manner. The adopted section also establishes a requirement for disposal of dairy waste in an RCS to be subject to the effluent limitations in §321.37 and design requirements in §§321.38 and 321.42(c).

New §321.49(e), *Recordkeeping Requirements*, establishes the requirements for keeping records of dairy waste placed in an RCS or playa. Records include a log of monthly dairy waste received and stored at the AFO or CAFO.

New §321.49(f), *General Requirements*, establishes the requirements for disposal of dairy waste in an RCS or playa. Specifically, the adopted rule prohibits dairy waste storage in certain playas for compliance with TWC §26.048. The adopted rule also requires a dairy operation using an RCS for storage of dairy waste ensure that storage of dairy waste doesn't cause an unauthorized discharge from the RCS. The adopted rule also requires oral and written notification to the TCEQ Regional Office when dairy waste is stored in an RCS.

New §321.49(g), *Dairy Waste Transfer*, establishes provisions to allow a dairy operation to transfer dairy waste to another dairy operation site for land application or storage

in an RCS to use for irrigation when needed. The adopted rule requires the owner or operator generating the dairy waste to keep a record of all dairy waste (gallons, or acre-feet) transferred to another dairy operation, the date of transfer, as well as the name(s) and address(es) of the recipients of the dairy waste.

Additionally, the adopted rule establishes a requirement for the owner or operator generating the dairy waste to provide the laboratory report for total nitrogen, total phosphorus, and total potassium content of the dairy waste to the receiver of the dairy waste. Book values for dairy waste nutrient contents may be used because under emergency conditions there may not be sufficient time to collect and analyze dairy waste and manage the dairy waste in a timely manner.

New §321.49(h), *Dairy Waste Received*, establishes requirements for a dairy operator that receives dairy waste to comply with the land application requirements in §321.48 or this section for storage of dairy waste in an RCS.

New §321.49(i), *Annual Reporting*, requires all information under §321.49(e) in the annual report required by §321.36(g) that is due to the TCEQ by March 31 of each year. The adopted new subsection also establishes a requirement for dairy operators not authorized by permit to submit information regarding the total dairy waste (gallons, or acre-feet) generated and land applied by the same due date.

The adopted rule creates new Chapter 321, Subchapter Q to authorize land application of dairy waste on agriculture land that is not part of an AFO or CAFO.

New Section §321.401, *Purpose and Applicability*, establishes that new Subchapter Q provides authorization by rule for direct land application of dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization and that the requirements of new Subchapter Q would apply to the entity or entities land applying the dairy waste and the owners of the land application area.

New §321.403, *Dairy Waste Management Alternatives*, lists options in addition to the adopted Sections 321.48, 321.49 and Subchapter Q, that a person or entity may use to manage dairy waste during emergency conditions. The section includes options such as direct land application to lands authorized under a Texas Pollutant Discharge Elimination System (TPDES) permit or Texas Land Application permit (TLAP) amended to include dairy waste management, disposal at a permitted solid waste landfill, disposal via a permitted injection well, hauling or discharging to a permitted domestic wastewater collection system with written consent from the plant operator or owner, or use as animal feed.

New §321.405, *Definitions*, establishes definitions for agronomic rate, agricultural land, dairy operation, dairy waste, emergency conditions, land application, and water in the state. The definition of dairy waste maintains the statutory definition with additional

language added to clarify the regulatory focus on liquid dairy waste and exclusion of solid and semi-solid forms of dairy waste. The definition of “emergency conditions” is consistent with the statutory definition in Texas Government Code §551.045(b)(2), with the addition of ice storm, mechanical failure, and any other situation deemed by the executive director to qualify as an emergency. The definition of “water in the state” is updated to reflect the change in name of the “Gulf of Mexico” to the “Gulf of America.”

New §321.407, *Protection of Surface Water and Groundwater Quality*, establishes that new Subchapter Q does not authorize the discharge of dairy waste into water in the state, including surface water and groundwater, nor does it authorize any contamination of groundwater.

New §321.409, *General Requirements*, establishes requirements for land application of dairy waste under emergency conditions by owners and operators of agricultural operations that may receive dairy waste for beneficial use, and that the property owner consent would be required for all land application activities. The adopted rule requires that dairy waste be land applied to fields that are vegetated with actively growing crops, or incorporated into the soils if applied to a fallow field. To protect surface and groundwater, the adopted rule would limit the maximum application rate to 2,000 gallons per acre per year, require setbacks for wells and surface waters, prohibit land application in the 100-year floodplain, prohibit land application during rainfall events or to frozen or saturated ground, and prohibit land application to soils with shallow groundwater. To reduce the occurrence of nuisance odors, land application of dairy

waste is prohibited within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

New §321.411, *Notification*, establishes requirements for the person or entity applying dairy waste or the owner of the land application areas to notify the appropriate TCEQ Regional Office upon land application of dairy waste. The adopted rule requires oral notification to occur within 24 hours of application and written notification within 14 days. The adopted rule includes information to assist landowners with identifying the regional office contact information. The adopted rule requires the notification to include the date, time, location, volume, and the applicable emergency condition.

New §321.413, *Duration of Authorization*, limits the authorization for land application of dairy waste under new Subchapter Q from the first day of the emergency condition(s) to a time period of seven (7) calendar days beyond the end of the emergency condition. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

### **Final Regulatory Impact Determination**

TCEQ reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC) §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not



meet the definition of a “Major environmental rule” as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a “Major environmental rule” adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A “Major environmental rule” is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The Texas Legislature enacted HB 692, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), and THSC, Chapter 361 (the Solid Waste Disposal Act), Subchapter C (Permits) by adding §26.0481 to the TWC and §361.1215 of the THSC, which provides an additional regulatory and legal method for dairy AFOs to dispose of dairy waste, which HB 692 defines as milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation or at a CAFO, as applicable.

HB 692 required TCEQ to adopt new TCEQ rules to implement HB 692's provisions.

HB 692 grants TCEQ rulemaking authority to create an authorization by rule for land application of dairy waste, and to adopt new rules allowing the disposal of dairy waste from a CAFO into an RCS, including a lagoon or playa, and authorize land application by irrigation associated with that disposal.

As the Bill Analysis from the Environmental Regulation Committee of the Texas House of Representatives makes clear, the 88th Texas Legislature enacted HB 692 with the aim of providing Texas dairies with another disposal method for unused milk or dairy waste. In Texas, milk or dairy waste is disposed of in a disposal well, of which there are only two locations in Texas for dairy waste. According to the Texas Association of Dairymen, the average cost to dispose a truckload of milk, about 50,000 pounds, is around \$3,000, which is a costly burden for dairy operators in Texas. Whereas, land application of dairy waste has proven to be an effective fertilizer, and based on current research, milk itself can improve soil health, if applied properly. This is due to milk's ability to provide nutrients to plants and stimulate the growth of beneficial fungi by supplying sugar. HB 692 addressed these issues by amending TWC and THSC to provide for the authorization for certain land applications and disposal of dairy waste.

HB 692 requires TCEQ to issue both an authorization by rule for land application of dairy waste, that minimizes the risk of water quality impairment caused by the land application, prescribes the conditions under which an authorization is issued, such as

the duration of the authorization, the location of the land application area or unit, the maximum quantity or application rate of dairy waste that may be applied or disposed of under the authorization, the suggested agronomic application rate for the dairy waste, and best management practices (BMPs) for the handling and disposal of dairy waste.

HB 692 requires TCEQ, to the extent permitted by federal law, to adopt rules allowing the storage of dairy waste by an AFO into an RCS, including a lagoon or playa, and the land application by irrigation associated with that disposal. The rules must require BMPs and other conditions to ensure that the disposal of dairy waste into the RCS or its associated land application does not impair water quality.

In order to implement the provisions of HB 692, TCEQ adopts the addition of new §321.48 and §321.49 to the existing 30 TAC Chapter 321, Subchapter B rules allowing dairy operations to land apply dairy waste; and storage of dairy waste in an RCS, including a lagoon or playa, and irrigate dairy waste from the RCS to land application areas. TCEQ also adopts the addition of new 321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413 under new 30 TAC Chapter 321, Subchapter Q, allowing entities to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization.

Therefore, the specific intent of the adopted rulemaking is related to expanding the existing CAFO Rules with regulatory options for disposal of dairy waste, as defined in HB 692.

The adopted rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, does not come under a delegation agreement or contract with a federal program, and finally, is not being adopted under TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in HB 692 of the 2023 Texas legislative session and implements existing state law. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

### **Takings Impact Assessment**

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the adopted rulemaking is to implement the legislative amendments to the THSC and the TWC in HB 692 by amending TCEQ's CAFO Rules to expand the existing CAFO Rules with regulatory options for disposal of dairy waste, as defined in HB 692. The adopted rulemaking will substantially advance this stated purpose by adopting new rule language that provides for the authorization for certain land applications and disposal of dairy waste.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TCG, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the adopted rules is to implement HB 692 by providing for the authorization for certain land applications and disposal of dairy waste. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking would not cause a taking under TGC, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found that the adoption is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rulemaking includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring 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 adopted rules include that discharges must comply with water quality-based effluent limits; and that discharges which increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development.

The adopted rulemaking is consistent with the above goals and policies by requiring dairy waste disposal activities to be conducted in a manner that is protective of water quality and prohibits the discharge of dairy waste into water in the state.

Promulgation and enforcement of the rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules would be consistent with these CMP goals and policies, and the rule would not create or have a direct or significant adverse effect on any CNRAs.

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

#### **Public comment**

At the February 13, 2025 Agenda, the commission directed the executive director to specifically invite public comment on the proposal to authorize the dairy waste management activities only under emergency conditions, without THSC, §361.1215 and TWC, §26.0481 expressly stating that they apply only in such situations. The proposed rule package was revised accordingly prior to publication in the Texas Register.

The commission offered a public hearing on March 31, 2025. The 30-day comment period closed on March 31, 2025. No public comments were received by the commission.



**SUBCHAPTER B: CONCENTRATED ANIMAL FEEDING OPERATIONS**

**§321.48 and §321.49**

**Statutory Authority**

The new sections are adopted under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The adopted new sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

**§321.48. Land Application of Dairy Waste**

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Dairy Operation--An Animal Feeding Operation (AFO) confining cattle that have been or may be used for production of milk, or otherwise associated with a dairy, including cows, calves, and bulls.

(2) Dairy Waste--Milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation. For the purposes of this rule, dairy waste does not include solid or semi-solid milk products.

(3) Emergency Conditions - Instances where dairy waste is generated at any point along the dairy supply chain due to a reasonably unforeseeable situation, including but not limited to:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice, or snowstorm;

(B) power failure, transportation failure, mechanical failure, or interruption of communication facilities;

(C) epidemic;

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or

(E) any other situation deemed by the executive director to qualify as an emergency.

(b) Duration of Authorization. Authorization to land apply dairy waste on LMUs expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

(c) Purpose. This section provides authorization to a dairy operation to directly land apply dairy waste, including dairy waste received from a third-party, under emergency conditions to land that is under the control of a permitted CAFO or unpermitted AFO.

(d) Applicability. This section applies to the owner or operator of a dairy operation that generates or accepts third-party dairy waste that is land applied under emergency conditions.

(e) General Requirements. The following requirements apply to land application of dairy waste:

(1) Land application of dairy waste must comply with the requirements of §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements) for a CAFO or §§321.47(f), (h), and (i) of this title (relating to Land Application, Nutrient Utilization Plans (NUPs), and Recordkeeping Requirements, respectively) for an AFO.

(2) Discharge of dairy waste into water in the state from a land management unit (LMU) is prohibited.

(3) Land application practices shall be maintained to minimize ponding or puddling of the dairy waste on the site and prevent the occurrence of nuisance conditions.

(4) Land application of dairy waste shall not occur when the ground is frozen or saturated or during rainfall events.

(5) Dairy waste shall not be land applied within the well buffers identified in §321.38(b) of this title (relating to Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)).

(6) Land application of dairy waste shall not occur within 100 feet of any surface water in the state.

(7) Land application of dairy waste shall not occur within a vegetative buffer strip required by §321.40(h) of this title.

(8) Dairy waste shall not be land applied within the 100-year floodplain.

(9) Dairy waste shall not be land applied to soils with shallow, perched or seasonal water tables.

(10) Dairy waste may only be applied to fields that are vegetated with actively growing crops, hay or vegetation, or if to a fallow field, the dairy waste shall be incorporated into the soils within 48 hours of land application.

(11) Dairy waste application shall be limited to a maximum of 2,000 gallons per acre per year.

(12) Dairy waste shall be applied evenly to the soils.

(13) Dairy waste shall not be land applied within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

(14) There shall be no land application of dairy waste to an LMU if the LMU is required to have a NUP per §321.40(k)(3) of this title.

(15) There shall be no land application of dairy waste to an LMU that has or reaches a critical soil test phosphorus (P) level of greater than or equal to 500 ppm, with a P – Index rating of “High” or “Very High”.

(f) Notification Requirements. The dairy operator shall notify the appropriate TCEQ Regional Office orally within 24 hours of land application of dairy waste or by the next business day, and in writing within 14 days of the land application of the dairy waste. Written notification may be on paper, electronic mail, or other electronic method as prescribed by the executive director. The notification shall include the following information:

(1) the location of the land where the dairy waste was land applied, including the address of the area, latitude and longitude, or a site map;

(2) the applicable emergency condition;

(3) the date that dairy waste was land applied;

(4) the volume (gallons, or acre-feet) of dairy waste land applied;

(5) proof of authorization of the use of the field for land application of dairy waste if third-party land was used;

(6) the duration of the emergency condition and if additional time will be needed to complete the land application; and

(7) a certification signed by the dairy operator that the requirements of this subchapter were complied with during the land application of dairy waste.

(g) Recordkeeping Requirements. A dairy owner or operator that land applies dairy waste shall include the following information in the Pollution Prevention Plan (PPP) required in §321.46(d) of this title (relating to Concentrated Animal Feeding Operation (CAFO) Pollution Prevention Plan, Site Evaluation, Recordkeeping, and Reporting):

(1) a log of all dairy waste land applied at the AFO or CAFO updated at least monthly. Such records must include the following information:

(i) date of dairy waste application to each LMU;

(ii) location of the specific LMU and the volume (gallon, or acre-feet) applied during each application event;

(iii) acreage of each individual crop on which dairy waste is applied; and

(iv) weather conditions (such as the temperature, precipitation, and cloud cover) during the land application and 24 hours before and after the land application;

(2) documentation describing any discharge of dairy waste into water in the state including the date, time, volume of overflow (gallons, or acre-feet), a copy of the notification(s) provided to the regional office, and sample analysis results associated with the discharge; and

(3) copies of all notifications to the executive director, including any made to a Texas Commission on Environmental Quality regional office, as required by this subchapter, a permit, or authorization.



(h) Discharge Notification. Discharge notification requirements in §§321.44(a)(1) through (6) of this title (relating to Concentrated Animal Feeding Operation (CAFO) Notification Requirements) shall apply to the discharge of dairy waste.

(i) Discharge Monitoring. The dairy operator shall sample all discharges of dairy waste to surface water in the state and comply with the discharge monitoring in §321.44(b) of this title.

(j) Annual Reporting. The dairy operator land applying dairy waste shall include the information required by §321.48(g) in the annual report as indicated in §321.36(g) of this title (relating to Texas Pollutant Discharge Elimination System General Requirements for Concentrated Animal Feeding Operations (CAFOs)). Dairy operators that are not authorized by permit, and therefore not required to submit an annual report, must mail the following information to the appropriate TCEQ Regional Office that is servicing the area where the dairy operation is located by March 31 of each year:

(1) estimated total volume of dairy waste (in gallons) generated during the reporting period; and

(2) total volume of dairy waste (gallons, or acre-feet) land applied during the reporting period.

**§321.49. Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation**

(a) Purpose. This section provides authorization to a dairy operation to store dairy waste during emergency conditions in a retention control structure (RCS) or playa and subsequently land apply the dairy waste for beneficial use.

(b) Applicability. This section applies to an owner or operator of a dairy operation that stores dairy waste in an RCS or playa that meets the requirements of §321.41 of this title (relating to Special Requirements for Discharges to a Playa).

(c) Duration of Authorization. Authorization to store dairy waste in a retention control structure(s) expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

(d) Discharge Restrictions.

(1) There shall be no discharge or disposal of dairy waste from a dairy operation into or adjacent to water in the state, except in accordance with this section. Dairy waste generated by a dairy operation under this subchapter shall be retained and utilized in an appropriate and beneficial manner as provided by this section.

(2) The storage of dairy waste in an RCS is subject to the effluent limitations in 30 TAC §321.37 and the RCS design requirements in 30 TAC §321.38 and 30 TAC §321.42(c) of this title (relating to Effluent Limitations for Concentrated Animal Feeding Operation (CAFO) Production Areas, Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs), and Requirements Applicable to the Major Sole-Source Impairment Zone to maintain a margin of safety in the RCS).

(e) Recordkeeping Requirements. A dairy owner or operator that stores dairy waste in an RCS under emergency conditions shall include a log of all dairy waste received and stored at the AFO or CAFO, updated at least monthly, in the Pollution Prevention Plan (PPP) required in §321.46(d) of this title.

(f) General Requirements.

(1) Storage of dairy waste in a playa shall comply with §321.41 of this title.

(2) A dairy operation using an RCS for storage of dairy waste shall ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the design rainfall event, and the margin of safety for CAFOs located in a major sole-source impairment zone.

(3) The operator shall not store dairy waste in an RCS that is in danger of imminent overflow from chronic or catastrophic rainfall or catastrophic conditions.

(4) The dairy operator shall notify the appropriate TCEQ Regional Office orally within 24 hours, or by the next business day, of storing dairy waste in an RCS.

The following information shall be provided during the oral notification:

(A) the dairy's authorization status: if the dairy is permitted or not permitted and, if permitted, the permit number;

(B) the name and address of the owner and/or operator;

(C) the name and location of the dairy;

(D) the site-specific emergency condition(s); and

(E) the duration of the emergency conditions and if additional time will be needed to manage dairy waste either by land application, placement in an RCS, or transfer to another dairy.

(5) Written notification. The dairy operator shall provide written notification to the appropriate TCEQ Regional Office within 14 days of storing dairy

waste in an RCS. Written notification may be on paper, electronic mail, or other electronic method as prescribed by the executive director. The following information shall be provided, in addition to the information required for oral notification, on a form that is prescribed by the executive director:

(A) location and name of the RCS that was used to store the dairy waste, including the latitude and longitude;

(B) the date(s) that the dairy waste was put into an RCS;

(C) the volume of dairy waste (gallons, or acre-feet) that was stored in an RCS;

(D) if there was any discharge of dairy waste from the RCSs, and the estimated volume of the discharge (gallons, or acre-feet); and

(E) a USGS topographical Map and a Site and Runoff Control Map identifying where the dairy waste was stored.

(g) Dairy Waste Transfer. A dairy operator may transfer dairy waste to another dairy site for land application or storage in an RCS to use for irrigation when needed.

(1) The owner or operator generating the dairy waste shall keep a record of the date and volume of dairy waste (gallons, or acre-feet) that is transferred to another dairy.

(2) The owner or operator generating the dairy waste shall provide the laboratory report for total nitrogen, total phosphorus, and total potassium content of the dairy waste to the receiver of the dairy waste. If the laboratory report is not available, the book value of dairy waste from the Texas A & M AgriLife Extension Services shall be used in lieu of the laboratory report.

(3) The owner or operator generating the dairy waste shall keep records of the name(s) and address(s) of the recipient(s) of the dairy waste.

(h) Dairy Waste Received. A dairy operator that receives dairy waste shall comply with:

(1) §321.48 of this title (relating to Land Application of Dairy Waste) if dairy waste is land applied, or

(2) the requirements of this section if dairy waste is stored in an RCS.

(i) Annual Reporting. The dairy operator that places dairy waste in an RCS under emergency conditions shall include the information required by §321.49(e) in the

annual report required by §321.36(g) of this title. Dairy operators that are not authorized by permit, and therefore not required to submit an annual report, must mail the following information to the appropriate TCEQ Regional Office that is servicing the area where the dairy operation is located by March 31 of each year:

(1) estimated total volume of dairy waste (in gallons) stored during the reporting period; and

(2) total volume of dairy waste (gallons, or acre-feet) land applied during the reporting period.

**SUBCHAPTER Q: LAND APPLICATION OF DAIRY WASTE AUTHORITY**

**§321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413**

**Statutory Authority**

The new sections are adopted under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.



The adopted new sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

**§321.401. Purpose and Applicability**

This subchapter authorizes by rule direct land application of dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEO authorization. The requirements of this subchapter apply to the entity or entities land applying the dairy waste and the owners of the land application area.

**§321.403. Dairy Waste Management Alternatives**

A person or entity that needs to manage dairy waste under emergency conditions may use the options below:

(1) land application of dairy waste on agricultural land in accordance with this subchapter;

(2) retention and land application of dairy waste at an animal feeding operation in accordance with 30 TAC §§ 321.48 and 321.49 of this title (relating to Land Application of Dairy Waste and Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation);

(3) direct land application to agricultural lands authorized under a Texas Pollutant Discharge Elimination System permit or Texas Land Application permit amended to include dairy waste management in their permit;

(4) disposal at a permitted solid waste landfill;

(5) disposal via a permitted injection well;

(6) hauling or discharging to a permitted domestic wastewater collection system with written consent from the plant operator or owner;

(7) use as animal feed in accordance with Texas Agriculture Code, Chapter 141 (relating to Commercial Feed); or

(8) other beneficial uses approved by the executive director.

### **§321.405. Definitions**

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

(1) Agronomic rate - The dairy waste application rate designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the dairy waste that passes below the root zone of the crop or vegetation grown on the land.

(2) Agricultural land – Cropland, grassland, rangeland, pasture, or other specific land areas that are solely devoted to being used for growing crops, hay, or forage.

(3) Dairy Operation - Any entity involved in milk production, collection, transportation, receiving, transfer, or processing.

(4) Dairy Waste - Milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation. For the purposes of this rule, dairy waste does not include solid or semi-solid milk products.

(5) Emergency Conditions - Instances where dairy waste is generated at any point along the dairy supply chain due to a reasonably unforeseeable situation, including but not limited to:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice, or snowstorm;

(B) power failure, transportation failure, mechanical failure, or interruption of communication facilities;

(C) epidemic;

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or

(E) any other situation deemed by the executive director to qualify as an emergency.

(6) Land application--The act of applying dairy waste to agricultural land for beneficial use by crops, hay, or forage. Beneficial use includes the addition of nutrients from dairy waste, such as nitrogen and phosphorous, and the water content of dairy waste used to enhance moisture content of the soil.

(7) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, marshes, inlets, canals, the Gulf of Mexico America, 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.

#### **§321.407. Protection of Surface Water and Groundwater Quality**

(a) The discharge of dairy waste into water in the state, including surface waters and groundwater, is prohibited.

(b) Land application of dairy waste shall not contaminate groundwater.

#### **§321.409. General Requirements**

The following requirements apply to land application of dairy waste on agricultural land during emergency conditions. Property owner consent is required for all land application activities.

(1) Dairy waste shall not be land applied within 100-feet of any surface water in the state.

(2) Dairy waste shall not be land applied within 500 feet of a public drinking water well or within 150 feet of any other water well.

(3) Dairy waste shall not be land applied within 750 feet of an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

(4) Dairy waste shall not be land applied within the 100-year floodplain.

(5) Dairy waste shall not be land applied when the ground is frozen or saturated or during rainfall events.

(6) Dairy waste may only be applied to fields that are vegetated with actively growing crops, hay, or forage, or if to a fallow field, the dairy waste shall be incorporated into the soils within 48 hours of land application.

(7) Dairy waste application shall be limited to a maximum of 2,000 gallons per acre per year. For a full tanker truck load of 6,000 to 8,000 gallons, the contents must be applied over a minimum of three to four acres of land to comply with this requirement.

(8) Land application practices shall be maintained to minimize ponding or puddling of the dairy waste on the site and prevent the occurrence of nuisance conditions.

(9) Dairy waste must be conducive to land application (i.e., in a form that is spreadable and can be incorporated into the soil to avoid piling).

(10) Dairy waste shall not be land applied to soils with shallow, perched, or seasonal water tables.

### **§321.411. Notification**

(a) The person or entity applying dairy waste, or the owner of the land application areas, shall notify the appropriate TCEQ Regional Office upon land application of dairy waste. Oral notification must occur within 24 hours of land application and written notification within 14 days. Contact information for TCEQ Regional Offices is available in the TCEQ publication number M-070 titled “Area, Region, and Watermaster Offices” available on the TCEQ website at: [www.tceq.texas.gov/publications](http://www.tceq.texas.gov/publications).

(b) The notification must include the following information:

(1) the location where the dairy waste was land applied including the address, latitude and longitude, or a map;

(2) the applicable emergency condition;

(3) the date and time that dairy waste was land applied;

(4) the volume (gallons) of dairy waste that was land applied; and

(5) the duration of the emergency conditions and if additional time will be needed to complete the land application on agricultural land.

**§321.413. Duration of Authorization**

Authorization to land apply dairy waste on agricultural land expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.



The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts the amendment to §335.2 and §335.6.

Amended §335.2 and §335.6 are adopted without changes to the proposed text as published in the February 28, 2025, issue of the *Texas Register* (50 TexReg 1642) and, therefore, will not be republished.

### **Background and Summary of the Factual Basis for the Adopted Rules**

TCEQ is adopting amendments to 30 Texas Administrative Code (TAC) Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste) to implement House Bill (HB) 692, 88th Texas Legislature, which added §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC) and §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC). The bill directs TCEQ to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application (THSC §361.1215); 2) adopt rules allowing the disposal of dairy waste from dairy operations either permitted as a concentrated animal feeding operation (CAFO) or unpermitted animal feeding operation (AFO) into a retention control structure (RCS), including a lagoon or playa (TWC §26.0481(b)(1)); and, 3) authorize land application by irrigation associated with that disposal (TWC §26.0481(b)(2)). Adopted amendments in 30 Texas Administrative Code (TAC) Chapter 321 (Control of Certain Activities by Rule) prescribe the standards for land application of dairy waste under emergency conditions as further described in the preamble *Background and Summary of the Factual Basis for the Adopted Rules* for Chapter 321 amendments.

Dairy waste from CAFOs and AFOs is considered industrial waste in Texas, and land application or disposal of dairy waste would be subject to a permit under §335.2 or notification under §335.6. Amended §335.2 exempts land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the permitting requirements of Chapter 335. Amended §335.6 exempts land application activities conducted during emergency conditions and in compliance with Chapter 321 from Chapter 335 notification requirements. Although the land application or disposal of dairy waste in compliance with Chapter 321 would not be subject to permitting or notification requirements under Chapter 335, land used for disposing of solid waste, including dairy waste, would be a solid waste facility under THSC §361.003(36).

As part of this rulemaking, the commission is also adopting amendments to 30 TAC Chapter 321 (Control of Certain Activities by Rule) concurrently in this issue of the *Texas Register*.

### **Section by Section Discussion**

Amended §335.2, *Permit Required*, adds paragraph (d)(10) to exempt from permitting under Chapter 335 the land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321.

Amended §335.6, *Notification Requirements*, adds subsection (n) to exempt land application or disposal of dairy waste under emergency conditions in compliance with

Chapter 321 from the notification requirements of §335.6.

### **Final Regulatory Impact Determination**

TCEQ reviewed the adopted rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC) §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a “Major environmental rule” as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a “Major environmental rule” adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A “Major environmental rule” is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The 88th Texas Legislature enacted HB 692, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), and THSC, Chapter 361 (the Solid Waste Disposal Act), Subchapter C (Permits) by adding §26.0481 to the

TWC and §361.1215 of the THSC, which provides an additional regulatory and legal method for dairy AFOs to dispose of dairy waste, which HB 692 defines as milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation or at a CAFO, as applicable.

HB 692 required TCEQ to adopt new rules to implement HB 692's provisions.

HB 692 grants TCEQ rulemaking authority to create an authorization by rule for land application of dairy waste, and to adopt new rules allowing the disposal of dairy waste from a CAFO into an RCS, including a lagoon or playa, and authorize land application by irrigation associated with that disposal. The TCEQ has adopted revisions to 30 TAC Chapter 321 to implement the new requirements for land application or disposal of dairy waste.

The adopted amendments in Chapter 335 implement HB 692 by subjecting the requirements for land application or disposal of dairy waste to the requirements of Chapter 321 and not the permitting or notification requirements of Chapter 335. Dairy waste is considered industrial waste in Texas, and land application or disposal of dairy waste would be subject to a permit under §335.2 or notification under §335.6. The adopted amendment of §335.2 would exempt land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the permitting requirements of Chapter 335. The adopted amendment of §335.6 would

exempt land application activities conducted during emergency conditions and in compliance with Chapter 321 from Chapter 335 notification requirements. Although the land application or disposal of dairy waste in compliance with Chapter 321 would not be subject to permitting or notification requirements under Chapter 335, land used for disposing of solid waste, including dairy waste, would be a solid waste facility under THSC §361.003(36).

Therefore, the specific intent of the adopted rulemaking is related to expanding the regulatory options for land application or disposal of dairy waste, as defined in HB 692.

The adopted rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the adopted rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the adopted rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the adopted rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective

state laws. Third, does not come under a delegation agreement or contract with a federal program, and finally, is not being adopted under the TCEQ's general rulemaking authority. This rulemaking is being adopted under a specific state statute enacted in HB 692 of the 2023 Texas legislative session and implements existing state law. Because this adoption does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invited public comment on the draft regulatory impact analysis determination. No comments were received on the draft regulatory impact analysis determination.

### **Takings Impact Assessment**

TCEQ evaluated the adopted rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole

or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the adopted rulemaking is to implement the legislative amendments to the THSC and the TWC in HB 692 by revising TCEQ's rules in Chapter 321 to establish requirements for land application or disposal of dairy waste. The adopted rulemaking will substantially advance this stated purpose by adopting new rule language in Chapter 335 that exempts from permitting or notification under Chapter 335 for certain land applications and disposal of dairy waste in compliance with Chapter 321.

Promulgation and enforcement of the adopted rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these adopted rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the adopted rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce

any property's value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the adopted rules is to implement HB 692 by providing for the authorization for certain land applications and disposal of dairy waste. The adopted rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the adopted rulemaking will not cause a taking TGC, Chapter 2007.

### **Consistency with the Coastal Management Program**

The commission reviewed the adopted rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the adopted rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the adopted rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the adopted rulemaking includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring 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 adopted rules include that discharges must comply with water quality-based effluent limits; and that discharges which increase pollutant loadings to coastal waters must not impair designated uses of



coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development.

The adopted rulemaking is consistent with the above goals and policies by requiring dairy waste disposal activities to be conducted in a manner that is protective of water quality and prohibits the discharge of dairy waste into water in the state.

Promulgation and enforcement of the rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the adopted rules would be consistent with these CMP goals and policies, and the rule would not create or have a direct or significant adverse effect on any CNRAs.

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

#### **Public comment**

The commission offered a public hearing on March 31, 2025. The 30-day comment period closed on March 31, 2025. No public comments were received by the commission.

**SUBCHAPTER A: INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE**  
**IN GENERAL**  
**§§335.2, 335.6**

**Statutory Authority**

The amended sections are adopted under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

The commission adopted these amendments under THSC, §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste;

THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361, Subchapter B, does not abridge, modify, or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, and THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The adopted amended sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, §26.121, §26.0481, and THSC, §361.1215.

### **§335.2. Permit Required.**

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid

waste or municipal hazardous waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Texas Department of State Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the

application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 *et seq.*, that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific

Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection, a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the federal Clean Water Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility; [or]



(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities; or [.]

(10) the land application, as defined in §321.405 of this title (relating to Definitions), or the disposal of dairy waste, as defined in §321.48 of this title (relating to Land Application of Dairy Waste), under emergency conditions, as defined in §321.48 of this title, in compliance with Chapter 321 of this title (relating to Control of Certain Activities by Rule).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who meets the conditions for exemption for a very small quantity generator in 40 CFR §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d) as adopted under §335.504 of this title (relating to Hazardous Waste Determination).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f) as adopted under §335.504 of this title.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive

director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of this title will authorize operations until a final decision is made on the application for an individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

(1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or

(2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

(p) No permit under this chapter shall be required for a reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in §335.751 of this title (relating to Definitions) in compliance with Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals). Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals in compliance with Subchapter W of this chapter shall notify the executive director in accordance with §335.6 of this title.

#### **§335.6. Notification Requirements.**

(a) Notification of industrial solid waste and municipal hazardous waste activities not authorized by a permit. Any person who intends to store, process, recycle, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director using a method approved by the executive director, that storage, processing, recycling, or disposal activities are planned.

(1) A person required to notify of activities under this subsection shall notify at least 90 days before conducting an activity under this subsection.

(2) A person required to notify under this section shall submit additional information, upon request, to the executive director to demonstrate that storage, processing, recycling, or disposal is compliant with the terms of this chapter, including but not limited to information listed under subsection (b)(3) of this section.

(b) Duty to notify of changed and new information. Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall promptly notify the executive director using a method approved by the executive director of:



(1) any new information concerning storage, processing, and disposal described in paragraph (3) of this subsection; and

(2) any changes to information previously submitted or reported under subsection (a) of this section:

(A) authorized in any permit issued by the commission; or

(B) submitted or reported to the commission in any application filed with the commission.

(3) Information concerning storage, processing, and disposal required to be submitted under this subsection includes and is not limited to:

(A) waste composition;

(B) waste management methods;

(C) facility engineering plans and specifications; and

(D) the geology where the facility is located.

(4) A person who notifies the executive director under this section shall immediately document and notify the executive director within 90 days of changes in information previously provided and additional information that was not provided.

(c) Generator registration.

(1) Any person, by site, that generates in any calendar month more than 100 kilograms of non-acute hazardous waste, more than 1 kilogram of acute hazardous waste, or more than 100 kilograms of industrial Class 1 waste shall register in a method approved by the executive director.

(2) Large quantity generators must meet the requirements of this subsection using the electronic interface provided by the executive director unless:

(A) the executive director has granted a written request to use paper forms or an alternative notification method; or

(B) the software does not have features capable of meeting the requirements.

(3) Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual

Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste).

(4) If waste is recycled on-site or managed pursuant to §335.2(d)(1) - (4) or (6) - (9) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section.

(5) The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(A) a description of the waste including:

(i) a description of the process generating the waste; and

(ii) the composition of the waste;

(B) a hazardous waste determination in accordance with §335.504 of this title (relating to Hazardous Waste Determination), which includes the appropriate United States Environmental Protection Agency (EPA) hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261;

(C) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including:

(i) whether the waste is managed on-site and/or off-site;

(ii) a description of the type and use of each on-site waste management facility unit;

(iii) a listing of the wastes managed in each unit; and

(iv) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(d) Transporter registration. Any person who transports hazardous waste or industrial Class 1 waste shall notify the executive director of such activity by registering using a method approved by the executive director. A person, by site, that generates in any calendar month less than 100 kilograms of non-acute hazardous waste, less than 1 kilogram of acute hazardous waste, and less than 100 kilograms of industrial Class 1 waste and only transports their own waste is not required to comply with this subsection.

(e) Transfer facility registration. A person that intends to operate a transfer

facility in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity by registering using a method approved by the executive director.

(f) Waste analysis. Any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste shall provide the chemical analysis of the solid waste performed in accordance with Subchapter R of this chapter (relating to Waste Classification) to the executive director upon written request.

(g) Notification prior to facility expansion. Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity or facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(h) Notification of recycling activities. Any person who intends to ship off-site or transfer to another person for recycling, or who conducts or intends to conduct the recycling of, industrial solid waste, municipal hazardous waste, recyclable materials, or nonhazardous recyclable materials as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or

Subchapter H of this chapter shall notify the executive director using a method approved by the executive director.

(1) A person that is required to notify under this subsection shall include, at a minimum, the following information:

(A) the type(s), classification(s), Texas waste code(s) and EPA hazardous waste number(s) described in 40 CFR Part 261, if any, of each industrial solid waste and municipal hazardous waste intended to be recycled;

(B) the method of storage prior to recycling; and

(C) the nature of the recycling activity.

(2) A person required to notify the executive director of the intent to recycle under this subsection may begin recycling activities 90 days after submitting notification of intent to recycle under this subsection if the executive director has not requested additional information in response to the notification or upon receipt of an acknowledgment from the executive director.

(i) Notification of operating under the small quantity burner exemption. The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA

and to the executive director indicating the following:

(1) the combustion unit is operating as a small quantity burner of hazardous waste;

(2) the owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection; and

(3) the maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification of used oil activities. Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), used oil generated by a very small quantity generator, and household used oil after collection that will be recycled shall notify in accordance with Chapter 324 of this title (relating to Used Oil).

(k) Notification exemption for the disposal of animal carcasses. A landowner who disposes of domestic or exotic animal carcasses and who complies with a certified water quality management plan developed for their site under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) is exempt from the notification requirements of

subsections (a) and (b) of this section.

(l) Healthcare facilities notification. A person required to notify the executive director under §335.755 of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals) shall notify using a method approved by the executive director.

(m) Reverse distributor registration. A person required to notify the executive director under §335.771 of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors) shall register using a method approved by the executive director.

(n) Notification exemption for land application or disposal of dairy waste under emergency conditions. A person land applying, as the term land application is defined in §321.405 of this title (relating to Definitions), or disposing of dairy waste, as defined in §321.48 of this title (relating to Land Application of Dairy Waste), under emergency conditions, as defined in §321.48 of this title, in compliance with Chapter 321, of this title (relating to Control of Certain Activities by Rule) is exempt from the notification requirements of this section.



§130.457. *Paint and Refinishing (Two Credits), Adopted 2015.*  
 §130.458. *Diesel Equipment Technology I (Two Credits), Adopted 2015.*  
 §130.459. *Diesel Equipment Technology II (Two Credits), Adopted 2015.*  
 §130.460. *Energy and Power of Transportation Systems (One Credit), Adopted 2015.*  
 §130.461. *Management of Transportation Systems (One Credit), Adopted 2015.*  
 §130.462. *Distribution and Logistics (One Credit), Adopted 2015.*  
 §130.463. *Practicum in Transportation Systems (Two Credits), Adopted 2015.*  
 §130.464. *Practicum in Distribution and Logistics (Two Credits), Adopted 2015.*  
 §130.465. *Extended Practicum in Transportation Systems (One Credit), Adopted 2015.*  
 §130.466. *Extended Practicum in Distribution and Logistics (One Credit), Adopted 2015.*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2025.

TRD-202500559  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 Texas Education Agency  
 Earliest possible date of adoption: March 30, 2025  
 For further information, please call: (512) 475-1497

## SUBCHAPTER Q. ENERGY

### 19 TAC §§130.485 - 130.491

**STATUTORY AUTHORITY.** The repeals are proposed under Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002(a), which identifies the subjects of the required curriculum; and TEC, §28.002(c), which requires the SBOE to identify by rule the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments.

**CROSS REFERENCE TO STATUTE.** The repeals implement Texas Education Code, §7.102(c)(4) and §28.002(a) and (c).

§130.485. *Oil and Gas Production I (One Credit).*  
 §130.486. *Oil and Gas Production II (One Credit).*  
 §130.487. *Oil and Gas Production III (One Credit).*  
 §130.488. *Oil and Gas Production IV (One Credit).*  
 §130.489. *Introduction to Process Technology (One Credit).*  
 §130.490. *Foundations of Energy (One Credit).*  
 §130.491. *Petrochemical Safety, Health, and Environment (One Credit).*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2025.

TRD-202500560  
 Cristina De La Fuente-Valadez  
 Director, Rulemaking  
 Texas Education Agency  
 Earliest possible date of adoption: March 30, 2025  
 For further information, please call: (512) 475-1497

## TITLE 30. ENVIRONMENTAL QUALITY

### PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

#### CHAPTER 321. CONTROL OF CERTAIN ACTIVITIES BY RULE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to add new §§321.48, 321.49, 321.401, 321.403, 321.405, 321.407, 321.409, 321.411, and 321.413.

**Background and Summary of the Factual Basis for the Proposed Rules**

TCEQ is proposing to amend 30 Texas Administrative Code (TAC) Chapter 321 (Control of Certain Activities by Rule), Subchapter B (Concentrated Animal Feeding Operations) and add new Subchapter Q (Land Application of Dairy Waste Authority) to implement House Bill (HB) 692, 88th Legislative Session, which added §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC) and §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC). The bill directs TCEQ to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application (THSC §361.1215); 2) adopt rules allowing the disposal of dairy waste from dairy operations either permitted as a concentrated animal feeding operation (CAFO) or unpermitted animal feeding operation (AFO) into a control or retention facility, including a lagoon or playa (TWC §26.0481(b)(1)); and, 3) authorize land application by irrigation associated with that disposal (TWC §26.0481(b)(2)).

This rulemaking proposes to add new §321.48 and §321.49 to the CAFO rules in 30 TAC Chapter 321, Subchapter B, to allow dairy operations to land apply dairy waste directly to land application areas, or put dairy waste in a retention control structure (RCS), including a lagoon or playa, and subsequently irrigate land application areas with dairy waste from the RCS. These activities would only be allowed under emergency conditions.

This rulemaking proposes to add new §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, and 321.413 under new 30 TAC Chapter 321, Subchapter Q, to allow entities, including landowners and any person along the dairy supply chain (milk haulers, milk processing plant, and milk bottling facilities), to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization.

As part of this rulemaking, the commission is also proposing amendments of 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste) concurrently in this issue of the *Texas Register*.

Section by Section Discussion

Information from the State Technical Standards of the Natural Resource Conservation Service (NRCS) for Nutrient Management Code 590 will be included for guidance. The requirements of the new CAFO Rules will mandate dairy operators to update the site-specific nutrient management plan (NMP) if commencing land application of dairy waste and to irrigate land application areas based on the application rates that are determined in accordance with the narrative rate approach from both Title 40 Code of Federal Regulations (CFR) §122.42(e)(5)(ii), and the rules found at 30 TAC §321.36(c) or §321.47(f)(3) of this title. This approach allows changes to the NMP to occur at the facility at any time, and adjustments can be made in the implementation of the plan.

The proposed rules would include water quality-based limitations to control all pollutants that could be discharged at a level that will cause, or have the reasonable potential to cause, or contribute to an excursion above any state water quality standard. This would include water quality-based effluent limitations for the production area and land application area of dairy operations. All recordkeeping and annual reporting requirements would be under proposed new §321.48 and §321.49.

Proposed new §321.48, *Land Application of Dairy Waste*, would establish rules to provide authorization to a dairy operation to directly land apply dairy waste, and transfer and receive third-party (i.e., off-site) dairy waste to apply to land that is under the control of a permitted or an unpermitted AFO.

Proposed new §321.48(a), *Definitions*, would establish definitions for dairy operation, dairy waste, and emergency conditions. The definition of dairy waste maintains the statutory definition with additional language added to clarify the regulatory focus on liquid dairy waste and exclusion of solid and semi-solid forms of dairy waste. The definition of "emergency conditions" is consistent with the statutory definition in Texas Government Code §551.045(b)(2), with the addition of ice storm, mechanical failure, and any other situation deemed by the executive director to qualify as an emergency.

Proposed new §321.48(b), *Duration of Authorization*, would limit the duration of the authorization for land application of dairy waste from the first day of the emergency condition(s) to seven (7) calendar days after the emergency condition has ended. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

Proposed new §321.48(c), *Purpose*, would establish that new §321.48 provides authorization to a dairy operation to land apply dairy waste, including dairy waste received from a third party, under emergency conditions to land that is under the control of a dairy CAFO or unpermitted AFO.

Proposed new §321.48(d), *Applicability*, would establish a requirement for the owner or operator of a dairy operation that generates dairy waste and the owner or operator of the dairy operation that accepts dairy waste to comply with all the requirements of new §321.48.

Proposed new §321.48(e), *General Requirements*, would establish the requirements for land application of dairy waste by CAFOs and AFOs. The section references §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements) and the AFO requirements in §§321.47(f) relating to land application, (h) nutrient utilization

plans, and (i) record keeping requirements. The proposed rule would require that dairy waste be evenly applied to fields that are vegetated with actively growing crops, or incorporated into the soils if applied to a fallow field. To protect surface and groundwater, the proposed rule would limit the maximum application rate to 2,000 gallons per acre per year, require setbacks for wells and surface waters, and prohibit land application in the 100-year floodplain. To reduce the occurrence of nuisance odors, land application of dairy waste would be prohibited within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park. Lastly, to prevent over-application of nutrients, land application of dairy waste would be prohibited on land application areas that have elevated nutrient levels or land management units (LMUs) with a nutrient utilization plan.

Proposed new §321.48(f), *Notification Requirements*, would establish requirements for a dairy operator to notify the appropriate TCEQ Regional Office orally within 24 hours or by the next business day, and in writing on paper, electronic mail or other electronic method approved by the executive director within 14 days, of land applying dairy waste. The proposed new section would establish requirements for the written notification to contain the location of the disposal area; a description of the emergency condition; the date that dairy waste was applied; volume applied (gallons, or acre-feet); proof of authorization of the use of the field for dairy waste disposal if third-party (offsite) land was used; the duration of the emergency condition and if additional time will be needed; and a signed certification.

Proposed new §321.48(g), *Recordkeeping Requirements*, would establish requirements for a dairy owner or operator that land applies dairy waste to include certain information in the land application record in the onsite Pollution Prevention Plan (PPP). At a minimum, it must include a log of dairy waste land applied, weather conditions, documentation of any discharge of dairy waste, and a copy of notification(s) to the executive director.

Proposed new §321.48(h), *Discharge Notification*, would establish that requirements in §321.44(a)(1) through (6) apply to the discharge of dairy waste.

Proposed new §321.48(i), *Discharge Monitoring*, would establish a requirement for the dairy operator to sample all discharges of dairy waste to surface water in the state and comply with the discharge monitoring in §321.44(b).

Proposed new §321.48(j), *Annual Reporting*, would establish a requirement for a dairy operator land applying dairy waste to include the information required by §321.48(g) in the annual report required by §321.36(g) that is due to TCEQ on March 31, of each year. The proposed new subsection would also establish a requirement for dairy operators not authorized by permit to submit information regarding the total dairy waste (gallons, or acre-feet) generated and land applied by the same due date.

Proposed new §321.49, *Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation*, would establish rules to provide authorization to a dairy operation to store dairy waste in an RCS during emergency conditions.

Proposed new §321.49(a), *Purpose*, would establish that §321.49 provides authorization to a dairy operation to store dairy waste in an RCS or playa under emergency conditions and subsequently land apply the dairy waste.

Proposed new §321.49(b), *Applicability*, would establish that the provisions of §321.49 apply to an owner or operator of a dairy operation that stores dairy waste in an RCS, or playa that meets the special requirements for discharges of §321.41.

Proposed new §321.49(c), *Duration of Authorization*, would limit the Authorization to put dairy waste in an RCS from the first day of the emergency condition(s) to seven (7) calendar days after the emergency condition ends. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

Proposed new §321.49(d), *Discharge Restrictions*, would establish a prohibition on the discharge or disposal of dairy waste from a dairy operation into or adjacent to water in the state, except in accordance with new §321.49. The proposed section would establish a requirement for dairy waste generated by a dairy operation under this title to be retained and utilized in an appropriate and beneficial manner. The proposed section would also establish a requirement for disposal of dairy waste in an RCS to be subject to the effluent limitations in §321.37 and design requirements in §§321.38 and 321.42(c).

Proposed new §321.49(e), *Recordkeeping Requirements*, would establish the requirements for keeping records of dairy waste placed in an RCS or playa. Records would include a log of monthly dairy waste received and stored at the AFO or CAFO.

Proposed new §321.49(f), *General Requirements*, would establish the requirements for disposal of dairy waste in an RCS or playa. Specifically, the proposed rule would prohibit dairy waste storage in certain playas for compliance with TWC §26.048. The proposed rule would also require a dairy operation using an RCS for storage of dairy waste ensure that storage of dairy waste doesn't cause an unauthorized discharge from the RCS. The proposed rule would also require oral and written notification to the TCEQ Regional Office when dairy waste is stored in an RCS.

Proposed new §321.49(g), *Dairy Waste Transfer*, would establish provisions to allow a dairy operation to transfer dairy waste to another dairy operation site for land application or storage in an RCS to use for irrigation when needed. The proposed rule would require the owner or operator generating the dairy waste to keep a record of all dairy waste (gallons, or acre-feet) transferred to another dairy operation, the date of transfer, as well as the name(s) and address(es) of the recipients of the dairy waste.

Additionally, the proposed rule would establish a requirement for the owner or operator generating the dairy waste to provide the laboratory report for total nitrogen, total phosphorus, and total potassium content of the dairy waste to the receiver of the dairy waste. Book values for dairy waste nutrient contents may be used because under emergency conditions there may not be sufficient time to collect and analyze dairy waste and manage the dairy waste in a timely manner.

Proposed new §321.49(h), *Dairy Waste Received*, would establish requirements for a dairy operator that receives dairy waste to comply with the land application requirements in §321.48 or this section for storage of dairy waste in an RCS.

Proposed new §321.49(i), *Annual Reporting*, would require all information under §321.49(e) in the annual report required by §321.36(g) that is due to the TCEQ by March 31 of each year. The proposed new subsection would also establish a requirement for dairy operators not authorized by permit to submit in-

formation regarding the total dairy waste (gallons, or acre-feet) generated and land applied by the same due date.

The proposed rule would create new Chapter 321, Subchapter Q to authorize land application of dairy waste on agriculture land that is not part of an AFO or CAFO.

Proposed new §321.401, *Purpose and Applicability*, would establish that new Subchapter Q provides authorization by rule for direct land application of dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization and that the requirements of new Subchapter Q would apply to the entity or entities land applying the dairy waste and the owners of the land application area.

Proposed new §321.403, *Dairy Waste Management Alternatives*, would list options in addition to the proposed §§321.48, 321.49 and Subchapter Q, that a person or entity may use to manage dairy waste during emergency conditions. The section includes options such as direct land application to lands authorized under a Texas Pollutant Discharge Elimination System (TPDES) permit or Texas Land Application permit (TLAP) amended to include dairy waste management, disposal at a permitted solid waste landfill, disposal via a permitted injection well, hauling or discharging to a permitted domestic wastewater collection system with written consent from the plant operator or owner, or use as animal feed.

Proposed new §321.405, *Definitions*, would establish definitions for agronomic rate, agricultural land, dairy operation, dairy waste, emergency conditions, land application, and water in the state. The definition of dairy waste maintains the statutory definition with additional language added to clarify the regulatory focus on liquid dairy waste and exclusion of solid and semi-solid forms of dairy waste. The definition of "emergency conditions" is consistent with the statutory definition in Texas Government Code (TGC), §551.045(b)(2), with the addition of ice storm, mechanical failure, and any other situation deemed by the executive director to qualify as an emergency.

Proposed new §321.407, *Protection of Surface Water and Groundwater Quality*, would establish that new Subchapter Q does not authorize the discharge of dairy waste into water in the state, including surface water and groundwater, nor does it authorize any contamination of groundwater.

Proposed new §321.409, *General Requirements*, would establish requirements for land application of dairy waste under emergency conditions by owners and operators of agricultural operations that may receive dairy waste for beneficial use, and that the property owner consent would be required for all land application activities. The proposed rule would require that dairy waste be land applied to fields that are vegetated with actively growing crops, or incorporated into the soils if applied to a fallow field. To protect surface and groundwater, the proposed rule would limit the maximum application rate to 2,000 gallons per acre per year, require setbacks for wells and surface waters, prohibit land application in the 100-year floodplain, prohibit land application during rainfall events or to frozen or saturated ground, and prohibit land application to soils with shallow groundwater. To reduce the occurrence of nuisance odors, land application of dairy waste would be prohibited within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

Proposed new §321.411, *Notification*, would establish requirements for the person or entity applying dairy waste or the owner of the land application areas to notify the appropriate TCEQ Regional Office upon land application of dairy waste. The proposed rule would require oral notification to occur within 24 hours of application and written notification within 14 days. The proposed rule includes information to assist landowners with identifying the regional office contact information. The proposed rule would require the notification to include the date, time, location, volume, and the applicable emergency condition.

Proposed new §321.413, *Duration of Authorization*, would limit the authorization for land application of dairy waste under new Subchapter Q from the first day of the emergency condition(s) to a time period of seven (7) calendar days beyond the end of the emergency condition. Seven calendar days allows sufficient time to manage dairy waste after the emergency condition ends, however in the event that additional time is needed, the executive director can extend the duration of the authorization.

#### Fiscal Note: Costs to State and Local Government

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

#### Public Benefits and Costs

Mr. Girtten determined that for each year of the first five years the proposed rules are in effect, the public benefit from this rulemaking and concurrent rulemaking proposed in Chapter 335 will be rules that are consistent with state law, specifically HB 692 from the 88th Regular Legislative Session (2023). There may also be environmental benefits for the public because the provisions in Subchapter Q include delineated alternatives for the land application of dairy waste under emergency conditions for unpermitted AFOs. Lastly, the public may benefit from the land application of dairy waste for agricultural lands as described in §321.407(6).

The proposed rulemaking and concurrent rulemaking proposed in Chapter 335 is anticipated to result in fiscal benefit for permitted dairy CAFOs or unpermitted AFOs by providing a more cost-effective means of disposing of dairy waste under emergency conditions defined in §321.48(a) for AFOs / CAFOs and §321.405 for agricultural lands that are not associated with an AFO or any other TCEQ authorization. Currently such dairy waste is required to be disposed off-site by permitted entities at a cost of approximately \$3,000 per truckload. This rulemaking would provide a less costly means of disposal within CAFOs' existing operations, though any savings would be offset by costs associated with the alternate forms of disposal, such as costs associated with meeting discharge monitoring requirements (§321.48(i)). TCEQ currently regulates dairy operations at 424 permitted facilities, including 35 facilities authorized under an individual permit and 389 under the Texas CAFO General Permit, TXG920000. Economic benefits may also be realized for these and other entities that provide or receive dairy waste for beneficial uses described or referenced in §§321.49(h), 321.405, 321.407, and 321.411.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a

local economy in a material way for the first five years that the proposed rule is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination [if full RIA not required]

TCEQ reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by TGC, §2001.0225 and determined that the rulemaking is not subject to TGC, §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in TGC, §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The Texas Legislature enacted HB 692, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), and THSC, Chapter 361 (the Solid Waste Disposal Act), Subchapter C (Permits) by

adding §26.0481 to the TWC and §361.1215 of the THSC, which provides an additional regulatory and legal method for dairy AFOs to dispose of dairy waste, which HB 692 defines as milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation or at a CAFO, as applicable.

HB 692 required TCEQ to adopt new TCEQ rules to implement HB 692's provisions.

HB 692 grants TCEQ rulemaking authority to create an authorization by rule for land application of dairy waste, and to adopt new Rules allowing the disposal of dairy waste from a CAFO into an RCS, including a lagoon or playa, and authorize land application by irrigation associated with that disposal.

As the Bill Analysis from the Environmental Regulation Committee of the Texas House of Representatives makes clear, the 88th Texas Legislature enacted HB 692 with the aim of providing Texas dairies with another disposal method for unused milk or dairy waste. In Texas, milk or dairy waste is disposed of in a disposal well, of which there are only two locations in Texas for dairy waste. According to the Texas Association of Dairymen, the average cost to dispose a truckload of milk, about 50,000 pounds, is around \$3,000, which is a costly burden for dairy operators in Texas. Whereas, land application of dairy waste has proven to be an effective fertilizer, and based on current research, milk itself can improve soil health, if applied properly. This is due to milk's ability to provide nutrients to plants and stimulate the growth of beneficial fungi by supplying sugar. HB 692 addressed these issues by amending TWC and THSC to provide for the authorization for certain land applications and disposal of dairy waste.

HB 692 requires TCEQ to issue both an authorization by rule for land application of dairy waste, that minimizes the risk of water quality impairment caused by the land application, prescribes the conditions under which an authorization is issued, such as the duration of the authorization, the location of the land application area or unit, the maximum quantity or application rate of dairy waste that may be applied or disposed of under the authorization, the suggested agronomic application rate for the dairy waste, and best management practices (BMPs) for the handling and disposal of dairy waste.

HB 692 requires TCEQ, to the extent permitted by federal law, to adopt rules allowing the storage of dairy waste by an AFO into an RCS, including a lagoon or playa, and the land application by irrigation associated with that disposal. The rules must require BMPs and other conditions to ensure that the disposal of dairy waste into the RCS or its associated land application does not impair water quality.

In order to implement the provisions of HB 692, TCEQ proposes to add new §321.48 and §321.49 to the existing 30 TAC Chapter 321, Subchapter B rules allowing dairy operations to land apply dairy waste; and storage of dairy waste in an RCS, including a lagoon or playa, and irrigate dairy waste from the RCS to land application areas. TCEQ also proposes to add new §321.401, §321.403, §321.405, §321.407, §321.409, §321.411, and §321.413 under new 30 TAC Chapter 321, Subchapter Q, to allow entities to directly land apply dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization.

Therefore, the specific intent of the proposed rulemaking is related to expanding the existing CAFO Rules with regulatory options for disposal of dairy waste, as defined in HB 692.

The proposed rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in TGC, §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, does not come under a delegation agreement or contract with a federal program, and finally, is not being proposed under TCEQ's general rulemaking authority. This rulemaking is being proposed under a specific state statute enacted in HB 692 of the 2023 Texas legislative session and implements existing state law. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or temporarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement the legislative amendments to the THSC and the TWC in HB 692 by amending TCEQ's CAFO Rules to expand the existing CAFO Rules with regulatory options for disposal of dairy waste, as defined in HB 692. The proposed rulemaking will substantially advance this stated purpose by adopting new rule language that provides for the authorization for certain land applications and disposal of dairy waste.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TCG, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the proposed rules is to implement HB 692 by providing for the authorization for certain land applications and disposal of dairy waste. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking would not cause a taking under TGC, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rulemaking includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resources (CNRAs); and ensuring 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 rules include that discharges must comply with water quality-based effluent limits; and that discharges which increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly degrade coastal water quality, unless necessary for important economic or social development.

The proposed rulemaking is consistent with the above goals and policies by requiring dairy waste disposal activities to be conducted in a manner that is protective of water quality and prohibits the discharge of dairy waste into water in the state.

Promulgation and enforcement of the rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules would be consistent with these CMP goals and policies, and the rule would not create or have a direct or significant adverse effect on any CNRAs.

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

#### Announcement of Hearing

In addition to comments on any other aspect of the proposed rules, the commission invites public comment on the proposal to authorize the dairy waste management activities only under emergency conditions, without Texas Health and Safety Code,

§361.1215 and Texas Water Code, §26.0481 expressly stating that they apply only in such situations.

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin, Texas, on Monday, March 31, 2025, at 10:00 a.m. in Building A, Room 173 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing at 9:30 a.m.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, March 27, 2025. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, March 28, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at: <https://events.teams.microsoft.com/event/a31122f6-2c36-4071-8e00-3a262e1c584f@871a83a4-a1ce-4b7a-8156-3bcd93a08fba>

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

A Spanish translation of this notice is available at: <https://www.tceq.texas.gov/rules/hearings.html>. If you need additional translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

#### Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via TCEQ Public Comments system. All comments should reference Rule Project Number 2023-139-321-OW. The comment period closes on March 31, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adapt.html](https://www.tceq.texas.gov/rules/propose_adapt.html). For further information, please contact Dr. Joy Alabi, Water Quality Division, at (512) 239-1318.

## SUBCHAPTER B. CONCENTRATED ANIMAL FEEDING OPERATIONS

### 30 TAC §321.48, §321.49

#### Statutory Authority

The new sections are proposed under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission,

while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The proposed new sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

§321.48. Land Application of Dairy Waste.

(a) Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1) Dairy Operation--An Animal Feeding Operation (AFO) confining cattle that have been or may be used for production of milk, or otherwise associated with a dairy, including cows, calves, and bulls.

(2) Dairy Waste--Milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation. For the purposes of this rule, dairy waste does not include solid or semi-solid milk products.

(3) Emergency Conditions - Instances where dairy waste is generated at any point along the dairy supply chain due to a reasonably unforeseeable situation, including but not limited to:

(A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice, or snowstorm;

(B) power failure, transportation failure, mechanical failure, or interruption of communication facilities;

(C) epidemic;

(D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or

(E) any other situation deemed by the executive director to qualify as an emergency.

(b) Duration of Authorization. Authorization to land apply dairy waste on LMUs expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

(c) Purpose. This section provides authorization to a dairy operation to directly land apply dairy waste, including dairy waste received from a third-party, under emergency conditions to land that is under the control of a permitted CAFO or unpermitted AFO.

(d) Applicability. This section applies to the owner or operator of a dairy operation that generates or accepts third-party dairy waste that is land applied under emergency conditions.

(e) General Requirements. The following requirements apply to land application of dairy waste:

(1) Land application of dairy waste must comply with the requirements of §321.40 of this title (relating to Concentrated Animal Feeding Operation (CAFO) Land Application Requirements) for a CAFO or §§321.47(f), (h), and (i) of this title (relating to Land Application, Nutrient Utilization Plans, and Recordkeeping Requirements, respectively) for an AFO.

(2) Discharge of dairy waste into water in the state from a land management unit (LMU) is prohibited.

(3) Land application practices shall be maintained to minimize ponding or puddling of the dairy waste on the site and prevent the occurrence of nuisance conditions.

(4) Land application of dairy waste shall not occur when the ground is frozen or saturated or during rainfall events.

(5) Dairy waste shall not be land applied within the well buffers identified in §321.38(b) of this title (relating to Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations (CAFOs)).

(6) Land application of dairy waste shall not occur within 100 feet of any surface water in the state.

(7) Land application of dairy waste shall not occur within a vegetative buffer strip required by §321.40(h) of this title.

(8) Dairy waste shall not be land applied within the 100-year floodplain.

(9) Dairy waste shall not be land applied to soils with shallow, perched or seasonal water tables.

(10) Dairy waste may only be applied to fields that are vegetated with actively growing crops, hay or vegetation, or if to a fallow field, the dairy waste shall be incorporated into the soils within 48 hours of land application.

(11) Dairy waste application shall be limited to a maximum of 2,000 gallons per acre per year.

(12) Dairy waste shall be applied evenly to the soils.

(13) Dairy waste shall not be land applied within 750 feet from an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.

(14) There shall be no land application of dairy waste to an LMU if the LMU is required to have a Nutrient Utilization Plan (NUP) per §321.40(k)(3) of this title.

(15) There shall be no land application of dairy waste to an LMU that has or reaches a critical soil test phosphorus (P) level of greater than or equal to 500 ppm, with a P- Index rating of "High" or "Very High".

(f) Notification Requirements. The dairy operator shall notify the appropriate TCEQ Regional Office orally within 24 hours of land application of dairy waste or by the next business day, and in writing within 14 days of the land application of the dairy waste. Written notification may be on paper, electronic mail, or other electronic method as prescribed by the executive director. The notification shall include the following information:

(1) the location of the land where the dairy waste was land applied, including the address of the area, latitude and longitude, or a site map;

- (2) the applicable emergency condition;
- (3) the date that dairy waste was land applied;
- (4) the volume (gallons, or acre-feet) of dairy waste land applied;
- (5) proof of authorization of the use of the field for land application of dairy waste if third-party land was used;
- (6) the duration of the emergency condition and if additional time will be needed to complete the land application; and
- (7) a certification signed by the dairy operator that the requirements of this subchapter were complied with during the land application of dairy waste.

(g) Recordkeeping Requirements. A dairy owner or operator that land applies dairy waste shall include the following information in the Pollution Prevention Plan (PPP) required in §321.46(d) of this title:

(1) a log of all dairy waste land applied at the AFO or CAFO updated at least monthly. Such records must include the following information:

- (A) date of dairy waste application to each LMU;
- (B) location of the specific LMU and the volume (gallon, or acre-feet) applied during each application event;
- (C) acreage of each individual crop on which dairy waste is applied; and
- (D) weather conditions (such as the temperature, precipitation, and cloud cover) during the land application and 24 hours before and after the land application;

(2) documentation describing any discharge of dairy waste into water in the state including the date, time, volume of overflow (gallons, or acre-feet), a copy of the notification(s) provided to the regional office, and sample analysis results associated with the discharge; and

(3) copies of all notifications to the executive director, including any made to a Texas Commission on Environmental Quality regional office, as required by this subchapter, a permit, or authorization.

(h) Discharge Notification. Discharge notification requirements in §321.44(a)(1) through (6) of this title shall apply to the discharge of dairy waste.

(i) Discharge Monitoring. The dairy operator shall sample all discharges of dairy waste to surface water in the state and comply with the discharge monitoring in §321.44(b) of this title.

(j) Annual Reporting. The dairy operator land applying dairy waste shall include the information required by §321.48(g) in the annual report as indicated in §321.36(g) of this title. Dairy operators that are not authorized by permit, and therefore not required to submit an annual report, must mail the following information to the appropriate TCEQ Regional Office that is servicing the area where the dairy operation is located by March 31 of each year:

- (1) estimated total volume of dairy waste (in gallons) generated during the reporting period; and
- (2) total volume of dairy waste (gallons, or acre-feet) land applied during the reporting period.

§321.49. Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation.

(a) Purpose. This section provides authorization to a dairy operation to store dairy waste during emergency conditions in a retention

control structure (RCS) or playa and subsequently land apply the dairy waste for beneficial use.

(b) Applicability. This section applies to an owner or operator of a dairy operation that stores dairy waste in an RCS or playa that meets the requirements of §321.41 of this title (relating to Special Requirements for Discharges to a Playa).

(c) Duration of Authorization. Authorization to store dairy waste in a retention control structure(s) expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

(d) Discharge Restrictions.

(1) There shall be no discharge or disposal of dairy waste from a dairy operation into or adjacent to water in the state, except in accordance with this section. Dairy waste generated by a dairy operation under this subchapter shall be retained and utilized in an appropriate and beneficial manner as provided by this section.

(2) The storage of dairy waste in an RCS is subject to the effluent limitations in 30 TAC §321.37 and the RCS design requirements in 30 TAC §321.38 and 30 TAC §321.42(c) of this title (relating to Effluent Limitations for Concentrated Animal Feeding Operation (CAFO) Production Areas, Control Facility Design Requirements Applicable to Concentrated Animal Feeding Operations, and Requirements Applicable to the Major Sole-Source Impairment Zone to maintain a margin of safety in the RCS).

(e) Recordkeeping Requirements. A dairy owner or operator that stores dairy waste in an RCS under emergency conditions shall include a log of all dairy waste received and stored at the AFO or CAFO, updated at least monthly, in the Pollution Prevention Plan (PPP) required in §321.46(d) of this title.

(f) General Requirements.

(1) Storage of dairy waste in a playa shall comply with §321.41 of this title.

(2) A dairy operation using an RCS for storage of dairy waste shall ensure that the required capacity in the RCS is available to contain rainfall and rainfall runoff from the design rainfall event, and the margin of safety for CAFOs located in a major sole-source impairment zone.

(3) The operator shall not store dairy waste in an RCS that is in danger of imminent overflow from chronic or catastrophic rainfall or catastrophic conditions.

(4) The dairy operator shall notify the appropriate TCEQ Regional Office orally within 24 hours, or by the next business day, of storing dairy waste in an RCS. The following information shall be provided during the oral notification:

- (A) the dairy's authorization status: if the dairy is permitted or not permitted and, if permitted, the permit number;
- (B) the name and address of the owner and/or operator;
- (C) the name and location of the dairy;
- (D) the site-specific emergency condition(s); and
- (E) the duration of the emergency conditions and if additional time will be needed to manage dairy waste either by land application, placement in an RCS, or transfer to another dairy.

(5) Written notification. The dairy operator shall provide written notification to the appropriate TCEQ Regional Office within 14 days of storing dairy waste in an RCS. Written notification may be on paper, electronic mail, or other electronic method as prescribed by



the executive director. The following information shall be provided, in addition to the information required for oral notification, on a form that is prescribed by the executive director:

(A) location and name of the RCS that was used to store the dairy waste, including the latitude and longitude;

(B) the date(s) that the dairy waste was put into an RCS;

(C) the volume of dairy waste (gallons, or acre-feet) that was stored in an RCS;

(D) if there was any discharge of dairy waste from the RCSs, and the estimated volume of the discharge (gallons, or acre-feet); and

(E) a USGS topographical Map and a Site and Runoff Control Map identifying where the dairy waste was stored.

(g) Dairy Waste Transfer. A dairy operator may transfer dairy waste to another dairy site for land application or storage in an RCS to use for irrigation when needed.

(1) The owner or operator generating the dairy waste shall keep a record of the date and volume of dairy waste (gallons, or acre-feet) that is transferred to another dairy.

(2) The owner or operator generating the dairy waste shall provide the laboratory report for total nitrogen, total phosphorus, and total potassium content of the dairy waste to the receiver of the dairy waste. If the laboratory report is not available, the book value of dairy waste from the Texas A & M AgriLife Extension Services shall be used in lieu of the laboratory report.

(3) The owner or operator generating the dairy waste shall keep records of the name(s) and address(s) of the recipient(s) of the dairy waste.

(h) Dairy Waste Received. A dairy operator that receives dairy waste shall comply with:

(1) §321.48 of this title (relating to Land Application of Dairy Waste) if dairy waste is land applied, or

(2) the requirements of this section if dairy waste is stored in an RCS.

(i) Annual Reporting. The dairy operator that places dairy waste in an RCS under emergency conditions shall include the information required by §321.49(e) in the annual report required by §321.36(g) of this title. Dairy operators that are not authorized by permit, and therefore not required to submit an annual report, must mail the following information to the appropriate TCEQ Regional Office that is servicing the area where the dairy operation is located by March 31 of each year:

(1) estimated total volume of dairy waste (in gallons) stored during the reporting period; and

(2) total volume of dairy waste (gallons, or acre-feet) land applied during the reporting period.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2025.

TRD-202500565

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 6, 2025

For further information, please call: (512) 239-2678



## SUBCHAPTER Q. LAND APPLICATION OF DAIRY WASTE AUTHORITY

**30 TAC §§321.401, 321.403, 321.405, 321.407, 321.409, 321.411, 321.413**

### Statutory Authority

The new sections are proposed under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The proposed new sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

### §321.401. Purpose and Applicability.

This subchapter authorizes by rule direct land application of dairy waste, under emergency conditions, on agricultural land that is not associated with an animal feeding operation or any other TCEQ authorization. The requirements of this subchapter apply to the entity or entities land applying the dairy waste and the owners of the land application area.

### §321.403. Dairy Waste Management Alternatives.

A person or entity that needs to manage dairy waste under emergency conditions may use the options below:

(1) land application of dairy waste on agricultural land in accordance with this subchapter;

(2) retention and land application of dairy waste at an animal feeding operation in accordance with 30 TAC §321.48 (relating to Land Application of Dairy Waste) and §321.49 (relating to Storage of Dairy Waste in a Retention Control Structure or Playa at an Animal Feeding Operation) of this title;

(3) direct land application to agricultural lands authorized under a Texas Pollutant Discharge Elimination System permit or Texas Land Application permit amended to include dairy waste management in their permit;

- (4) disposal at a permitted solid waste landfill;
- (5) disposal via a permitted injection well;
- (6) hauling or discharging to a permitted domestic wastewater collection system with written consent from the plant operator or owner;
- (7) use as animal feed in accordance with Texas Agriculture Code, Chapter 141 (relating to Commercial Feed); or
- (8) other beneficial uses approved by the executive director.

§321.405. Definitions.

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

- (1) Agronomic rate - The dairy waste application rate designed:
  - (A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and
  - (B) to minimize the amount of nitrogen in the dairy waste that passes below the root zone of the crop or vegetation grown on the land.
- (2) Agricultural land - Cropland, grassland, rangeland, pasture, or other specific land areas that are solely devoted to being used for growing crops, hay, or forage.
- (3) Dairy Operation - Any entity involved in milk production, collection, transportation, receiving, transfer, or processing.
- (4) Dairy Waste - Milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation. For the purposes of this rule, dairy waste does not include solid or semi-solid milk products.
- (5) Emergency Conditions - Instances where dairy waste is generated at any point along the dairy supply chain due to a reasonably unforeseeable situation, including but not limited to:
  - (A) fire, flood, earthquake, hurricane, tornado, or wind, rain, ice, or snowstorm;
  - (B) power failure, transportation failure, mechanical failure, or interruption of communication facilities;
  - (C) epidemic;
  - (D) riot, civil disturbance, enemy attack, or other actual or threatened act of lawlessness or violence; or
  - (E) any other situation deemed by the executive director to qualify as an emergency.
- (6) Land application--The act of applying dairy waste to agricultural land for beneficial use by crops, hay, or forage. Beneficial use includes the addition of nutrients from dairy waste, such as nitrogen and phosphorous, and the water content of dairy waste used to enhance moisture content of the soil.
- (7) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, wetlands, 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.

§321.407. Protection of Surface Water and Groundwater Quality.

- (a) The discharge of dairy waste into water in the state, including surface waters and groundwater, is prohibited.
- (b) Land application of dairy waste shall not contaminate groundwater.

§321.409. General Requirements.

The following requirements apply to land application of dairy waste on agricultural land during emergency conditions. Property owner consent is required for all land application activities.

- (1) Dairy waste shall not be land applied within 100-feet of any surface water in the state.
- (2) Dairy waste shall not be land applied within 500 feet of a public drinking water well or within 150 feet of any other water well.
- (3) Dairy waste shall not be land applied within 750 feet of an occupied residence or business structure, school (including associated recreational areas), permanent structure containing a place of worship, or public park.
- (4) Dairy waste shall not be land applied within the 100-year floodplain.
- (5) Dairy waste shall not be land applied when the ground is frozen or saturated or during rainfall events.
- (6) Dairy waste may only be applied to fields that are vegetated with actively growing crops, hay, or forage, or if to a fallow field, the dairy waste shall be incorporated into the soils within 48 hours of land application.
- (7) Dairy waste application shall be limited to a maximum of 2,000 gallons per acre per year. For a full tanker truck load of 6,000 to 8,000 gallons, the contents must be applied over a minimum of three to four acres of land to comply with this requirement.
- (8) Land application practices shall be maintained to minimize ponding or puddling of the dairy waste on the site and prevent the occurrence of nuisance conditions.
- (9) Dairy waste must be conducive to land application (i.e., in a form that is spreadable and can be incorporated into the soil to avoid piling).
- (10) Dairy waste shall not be land applied to soils with shallow, perched, or seasonal water tables.

§321.411. Notification.

(a) The person or entity applying dairy waste, or the owner of the land application areas, shall notify the appropriate TCEQ Regional Office upon land application of dairy waste. Oral notification must occur within 24 hours of land application and written notification within 14 days. Contact information for TCEQ Regional Offices is available in the TCEQ publication number M-070 titled "Area, Region, and Watermaster Offices" available on the TCEQ website at: [www.tceq.texas.gov/publications](http://www.tceq.texas.gov/publications).

(b) The notification must include the following information:

- (1) the location where the dairy waste was land applied including the address, latitude and longitude, or a map;
- (2) the applicable emergency condition;
- (3) the date and time that dairy waste was land applied;
- (4) the volume (gallons) of dairy waste that was land applied; and

(5) the duration of the emergency conditions and if additional time will be needed to complete the land application on agricultural land.

§321.413. Duration of Authorization.

Authorization to land apply dairy waste on agricultural land expires seven (7) calendar days after the emergency condition ends, unless an alternative duration for the authorization is granted by the executive director.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2025.

TRD-202500566

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: April 6, 2025

For further information, please call: (512) 239-2678



## CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE SUBCHAPTER A. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE IN GENERAL

### 30 TAC §335.2, §335.6

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the amendment to §335.2 and §335.6.

#### Background and Summary of the Factual Basis for the Proposed Rules

TCEQ is proposing to amend 30 Texas Administrative Code (TAC) Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste) to implement House Bill (HB) 692, 88th Texas Legislature, which added §26.0481 to Chapter 26, Subchapter B of the Texas Water Code (TWC) and §361.1215 to Chapter 361, Subchapter C of the Texas Health and Safety Code (THSC). The bill directs TCEQ to: 1) issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application (THSC §361.1215); 2) adopt rules allowing the disposal of dairy waste from dairy operations either permitted as a concentrated animal feeding operation (CAFO) or unpermitted animal feeding operation (AFO) into a retention control structure (RCS), including a lagoon or playa (TWC §26.0481(b)(1)); and, 3) authorize land application by irrigation associated with that disposal (TWC §26.0481(b)(2)). Proposed amendments in 30 TAC Chapter 321 (Control of Certain Activities by Rule) prescribe the standards for land application of dairy waste under emergency conditions as further described in the preamble *Background and Summary of the Factual Basis for the Proposed Rules* for Chapter 321 amendments.

Dairy waste from CAFOs and AFOs is considered industrial waste in Texas, and land application or disposal of dairy waste would be subject to a permit under §335.2 or notification under §335.6. The proposed amendment of §335.2 would exempt

land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the permitting requirements of Chapter 335. The proposed amendment of §335.6 would exempt land application activities conducted during emergency conditions and in compliance with Chapter 321 from Chapter 335 notification requirements. Although the land application or disposal of dairy waste in compliance with Chapter 321 would not be subject to permitting or notification requirements under Chapter 335, land used for disposing of solid waste, including dairy waste, would be a solid waste facility under THSC §361.003(36).

As part of this rulemaking, the commission is also proposing amendments of 30 TAC Chapter 321 (Control of Certain Activities by Rule) concurrently in this issue of the *Texas Register*.

#### Section by Section Discussion

Proposed amended §335.2, *Permit Required*, would add paragraph (d)(10) to exempt from permitting under Chapter 335 the land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321.

Proposed amended §335.6, *Notification Requirements*, would add subsection (n) to exempt land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the notification requirements of §335.6.

#### Fiscal Note: Costs to State and Local Government

Kyle Girtten, Analyst in the Budget and Planning Division, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rule.

#### Public Benefits and Costs

Mr. Girtten determined that for each year of the first five years the proposed rules are in effect, the public benefit from this rulemaking and concurrent rulemaking proposed in Chapter 321 will be rules that are consistent with state law, specifically HB 692 from the 88th Regular Legislative Session (2023). The proposed rulemaking would benefit entities disposing of or land applying dairy waste during emergency conditions by exempting such entities under these circumstances from permitting or notification requirements in §§335.2 or 335.6 if they are compliant with the rulemaking proposed in Chapter 321. Specifically, changes to §335.2 could benefit entities that are or otherwise would be permitted to dispose of or land apply dairy waste and changes to §335.6 could benefit persons disposing of or land applying dairy waste that are not required to be permitted.

#### Local Employment Impact Statement

The commission reviewed this proposed rulemaking and determined that a Local Employment Impact Statement is not required because the proposed rulemaking does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

#### Rural Communities Impact Assessment

The commission reviewed this proposed rulemaking and determined that the proposed rulemaking does not adversely affect rural communities in a material way for the first five years that the proposed rules are in effect. The amendments would apply statewide and have the same effect in rural communities as in urban communities.

#### Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses due to the implementation or administration of the proposed rule for the first five-year period the proposed rules are in effect.

#### Small Business Regulatory Flexibility Analysis

The commission reviewed this proposed rulemaking and determined that a Small Business Regulatory Flexibility Analysis is not required because the proposed rule does not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

#### Government Growth Impact Statement

The commission prepared a Government Growth Impact Statement assessment for this proposed rulemaking. The proposed rulemaking does not create or eliminate a government program and will not require an increase or decrease in future legislative appropriations to the agency. The proposed rulemaking does not require the creation of new employee positions, eliminate current employee positions, nor require an increase or decrease in fees paid to the agency. The proposed rulemaking amends an existing regulation. The proposed rulemaking does not increase or decrease the number of individuals subject to its applicability. During the first five years, the proposed rule should not impact positively or negatively the state's economy.

#### Draft Regulatory Impact Analysis Determination

TCEQ reviewed the proposed rulemaking in consideration of the regulatory analysis of major environmental rules required by Texas Government Code (TGC) §2001.0225 and determined that the rulemaking is not subject to §2001.0225(a) because it does not meet the definition of a "Major environmental rule" as defined in §2001.0225(g)(3). The following is a summary of that review.

Section 2001.0225 applies to a "Major environmental rule" adopted by a state agency, the result of which is to exceed standards set by federal law, exceed express requirements of state law, exceed requirements of delegation agreements between the state and the federal government to implement a state and federal program, or adopt a rule solely under the general powers of the agency instead of under a specific state law. A "Major environmental rule" is a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector or the state.

The 88th Texas Legislature enacted HB 692, amending TWC, Chapter 26 (Water Quality Control), Subchapter B (General Water Quality Power and Duties), and THSC, Chapter 361 (the Solid Waste Disposal Act), Subchapter C (Permits) by adding §26.0481 to the TWC and §361.1215 of the THSC, which provides an additional regulatory and legal method for dairy AFOs to dispose of dairy waste, which HB 692 defines as milk, milk by-products, or milk processing waste that is spilled, spoiled, adulterated, unmarketable, stranded, or otherwise unfit for human consumption produced by a dairy operation or at a CAFO, as applicable.

HB 692 required TCEQ to adopt new rules to implement HB 692's provisions.

HB 692 grants TCEQ rulemaking authority to create an authorization by rule for land application of dairy waste, and to adopt

new rules allowing the disposal of dairy waste from a CAFO into an RCS, including a lagoon or playa, and authorize land application by irrigation associated with that disposal. The TCEQ has proposed revisions to 30 TAC Chapter 321 to implement the new requirements for land application or disposal of dairy waste.

The proposed amendments in Chapter 335 implement HB 692 by subjecting the requirements for land application or disposal of dairy waste to the requirements of Chapter 321 and not the permitting or notification requirements of Chapter 335. Dairy waste is considered industrial waste in Texas, and land application or disposal of dairy waste would be subject to a permit under §335.2 or notification under §335.6. The proposed amendment of §335.2 would exempt land application or disposal of dairy waste under emergency conditions in compliance with Chapter 321 from the permitting requirements of Chapter 335. The proposed amendment of §335.6 would exempt land application activities conducted during emergency conditions and in compliance with Chapter 321 from Chapter 335 notification requirements. Although the land application or disposal of dairy waste in compliance with Chapter 321 would not be subject to permitting or notification requirements under Chapter 335, land used for disposing of solid waste, including dairy waste, would be a solid waste facility under THSC §361.003(36).

Therefore, the specific intent of the proposed rulemaking is related to expanding the regulatory options for land application or disposal of dairy waste, as defined in HB 692.

The proposed rules are intended to protect the environment or reduce risks to human health from environmental exposure. However, the proposed rulemaking will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs; nor would the proposed rulemaking adversely affect in a material way the environment, or the public health and safety of the state or a sector of the state. Therefore, the proposed rulemaking does not fit the TGC, §2001.0225 definition of "Major environmental rule."

Even if this rulemaking was a "Major environmental rule," this rulemaking meets none of the criteria in §2001.0225 for the requirement to prepare a full Regulatory Impact Analysis. First, this rulemaking is not governed by federal law. Second, it does not exceed state law but rather extends state law and TCEQ rules to adopted and effective state laws. Third, does not come under a delegation agreement or contract with a federal program, and finally, is not being proposed under the TCEQ's general rulemaking authority. This rulemaking is being proposed under a specific state statute enacted in HB 692 of the 2023 Texas legislative session and implements existing state law. Because this proposal does not constitute a major environmental rule, a regulatory impact analysis is not required.

Therefore, the commission does not adopt the rule solely under the commission's general powers. The commission invites public comment on the draft regulatory impact analysis determination. Written comments may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

#### Takings Impact Assessment

TCEQ evaluated the proposed rulemaking and performed an analysis of whether it constitutes a taking under TGC, Chapter 2007. The following is a summary of that analysis.

Under TGC, §2007.002(5), "taking" means a governmental action that affects private real property, in whole or in part or tem-

porarily or permanently, in a manner that requires the governmental entity to compensate the private real property owner as provided by the Fifth and Fourteenth Amendments to the United States Constitution or Section 17 or 19, Article I, Texas Constitution; or a governmental action that affects an owner's private real property that is the subject of the governmental action, in whole or in part or temporarily or permanently, in a manner that restricts or limits the owner's right to the property that would otherwise exist in the absence of the governmental action and is the producing cause of a reduction of at least 25% in the market value of the affected private real property, determined by comparing the market value of the property as if governmental action is not in effect and the market value of the property determined as if the governmental action is in effect.

The specific purpose of the proposed rulemaking is to implement the legislative amendments to the THSC and the TWC in HB 692 by revising TCEQ's rules in Chapter 321 to establish requirements for land application or disposal of dairy waste. The proposed rulemaking will substantially advance this stated purpose by adopting new rule language in Chapter 335 that exempts from permitting or notification under Chapter 335 for certain land applications and disposal of dairy waste in compliance with Chapter 321.

Promulgation and enforcement of the proposed rules will not be a statutory or constitutional taking of private real property because, as the commission's analysis indicates, TGC, Chapter 2007 does not apply to these proposed rules because these rules do not impact private real property in a manner that would require compensation to private real property owners under the United States Constitution or the Texas Constitution. Specifically, the proposed rulemaking does not apply to or affect any landowner's rights in any private real property because it does not burden (constitutionally), restrict, or limit any landowner's right to real property and reduce any property's value by 25 percent or more beyond that which would otherwise exist in the absence of the regulations. The primary purpose of the proposed rules is to implement HB 692 by providing for the authorization for certain land applications and disposal of dairy waste. The proposed rulemaking is reasonably taken to fulfill requirements of state law. Therefore, the proposed rulemaking will not cause a taking TGC, Chapter 2007.

#### Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 et seq., and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §29.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rulemaking includes protecting, preserving, restoring, and enhancing the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); and ensuring 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 rules include that discharges must comply with water quality-based effluent limits; and that discharges which increase pollutant loadings to coastal waters must not impair designated uses of coastal waters and must not significantly

degrade coastal water quality, unless necessary for important economic or social development.

The proposed rulemaking is consistent with the above goals and policies by requiring dairy waste disposal activities to be conducted in a manner that is protective of water quality and prohibits the discharge of dairy waste into water in the state.

Promulgation and enforcement of the rules would not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules would be consistent with these CMP goals and policies, and the rule would not create or have a direct or significant adverse effect on any CNRAs.

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

#### Announcement of Hearing

In addition to comments on any other aspect of the proposed rules, the commission invites public comment on the proposal to authorize the dairy waste management activities only under emergency conditions, without Texas Health and Safety Code, §361.1215 and Texas Water Code, §26.0481 expressly stating that they apply only in such situations.

The commission will hold a hybrid virtual and in-person public hearing on this proposal in Austin on Monday, March 31, 2025, at 10:00 a.m. in Building A, Room 173 at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Individuals who plan to attend the hearing virtually and want to provide oral comments and/or want their attendance on record must register by Thursday, March 27, 2025. To register for the hearing, please email [Rules@tceq.texas.gov](mailto:Rules@tceq.texas.gov) and provide the following information: your name, your affiliation, your email address, your phone number, and whether or not you plan to provide oral comments during the hearing. Instructions for participating in the hearing will be sent on Friday, March 28, 2025, to those who register for the hearing.

For the public who do not wish to provide oral comments but would like to view the hearing may do so at no cost at:

<https://events.teams.microsoft.com/event/a31122f6-2c36-4071-8e00-3a262e1c584f@871a83a4-a1ce-4b7a-8156-3bcd93a08fba>

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

A Spanish translation of this notice is available at: <https://www.tceq.texas.gov/rules/hearings.html>. If you need additional translation services, please contact TCEQ at (800) 687-4040. Si desea información general en español, puede llamar al (800) 687-4040.

#### Submittal of Comments

Written comments may be submitted to Gwen Ricco, MC 205, Office of Legal Services, Texas Commission on Environmental

Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to [fax4808@tceq.texas.gov](mailto:fax4808@tceq.texas.gov). Electronic comments may be submitted at: <https://tceq.commentinput.com/comment/search>. File size restrictions may apply to comments being submitted via TCEQ Public Comments system. All comments should reference Rule Project Number 2023-139-321-OW. The comment period closes on March 31, 2025. Please choose one of the methods provided to submit your written comments.

Copies of the proposed rulemaking can be obtained from the commission's website at [https://www.tceq.texas.gov/rules/propose\\_adopt.html](https://www.tceq.texas.gov/rules/propose_adopt.html). For further information, please contact Dr. Joy Alabi, Water Quality Division, at (512) 239-1318.

#### Statutory Authority

The amended sections are proposed under the Texas Water Code (TWC) and the Texas Health and Safety Code (THSC). TWC, §5.013 establishes the general jurisdiction of the commission, while TWC, §5.102 provides the commission with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103. TWC, §5.103 requires the commission to adopt any rule necessary to carry out its powers and duties under the TWC and other laws of the state. TWC, §5.120 requires the commission to administer the law so as to promote judicious use and maximum conservation and protection of the environment and the natural resources of the state. TWC, §26.121, prohibits the unlawful discharge of pollutants into or adjacent to water in the state except as authorized by a rule, permit, or order issued by the commission. TWC, §26.0481 provides the commission with authority to adopt rules to allow the disposal of dairy waste from a CAFO into a control or retention facility, including a lagoon or playa; and the land application by irrigation associated with that disposal.

The commission proposes these amendments under THSC, §361.011, which grants the commission authority over municipal solid waste; THSC, §361.017, which grants the commission jurisdiction over industrial solid waste and hazardous municipal waste; THSC, §361.024, which authorizes the commission to adopt rules consistent with the general purposes of the Solid Waste Disposal Act; and THSC, §361.078 which identifies that THSC Chapter 361, Subchapter B, does not abridge, modify, or restrict the commission's authority to adopt rules issue permits and enforce the terms of permits as necessary to maintain state authorization of Texas' hazardous waste program; and THSC, §361.119, which requires the commission to adopt rules and to adopt rules consistent with THSC, and THSC, §361.1215 provides the commission with authority to issue an authorization by rule for land application of dairy waste and to adopt rules governing that land application.

The proposed amended sections implement House Bill 692, 88th Texas Legislature (2023), TWC, §§5.013, 5.102, 5.103, 5.120, 26.121, 26.0481, and THSC, §361.1215.

#### §335.2. Permit Required.

(a) Except with regard to storage, processing, or disposal to which subsections (c) - (h) of this section apply, and as provided in §335.45(b) of this title (relating to Effect on Existing Facilities), and in accordance with the requirements of §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials) and §335.25 of this title (relating to Handling, Storing, Processing, Transporting, and Disposing of Poultry Carcasses), and as provided in §332.4 of this title (relating to General Requirements), no person may cause, suffer, allow, or permit any activity of storage, processing, or disposal of any industrial solid waste or municipal hazardous

waste unless such activity is authorized by a permit, amended permit, or other authorization from the Texas Commission on Environmental Quality (commission) or its predecessor agencies, the Texas Department of State Health Services (DSHS), or other valid authorization from a Texas state agency. No person may commence physical construction of a new hazardous waste management facility without first having submitted Part A and Part B of the permit application and received a finally effective permit.

(b) In accordance with the requirements of subsection (a) of this section, no generator, transporter, owner or operator of a facility, or any other person may cause, suffer, allow, or permit its wastes to be stored, processed, or disposed of at an unauthorized facility or in violation of a permit. In the event this requirement is violated, the executive director will seek recourse against not only the person who stored, processed, or disposed of the waste, but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted its waste to be stored, processed, or disposed.

(c) Any owner or operator of a solid waste management facility that is in existence on the effective date of a statutory or regulatory change that subjects the owner or operator to a requirement to obtain a hazardous waste permit who has filed a hazardous waste permit application with the commission in accordance with the rules and regulations of the commission, may continue the storage, processing, or disposal of hazardous waste until such time as the commission approves or denies the application, or, if the owner or operator becomes subject to a requirement to obtain a hazardous waste permit after November 8, 1984, except as provided by the United States Environmental Protection Agency (EPA) or commission rules relative to termination of interim status. If a solid waste facility which has become a commercial hazardous waste management facility as a result of the federal toxicity characteristic rule effective September 25, 1990, and is required to obtain a hazardous waste permit, such facility that qualifies for interim status is limited to those activities that qualify it for interim status until the facility obtains the hazardous waste permit. Owners or operators of municipal hazardous waste facilities that satisfied this requirement by filing an application on or before November 19, 1980, with the EPA are not required to submit a separate application with the DSHS. Applications filed under this section shall meet the requirements of §335.44 of this title (relating to Application for Existing On-Site Facilities). Owners and operators of solid waste management facilities that are in existence on the effective date of statutory or regulatory amendments under the Texas Solid Waste Disposal Act (Vernon's Supplement 1991), Texas Civil Statutes, Article 4477-7, or the Resource Conservation and Recovery Act (RCRA), 42 United States Code, §§6901 *et seq.*, that render the facilities subject to the requirement to obtain a hazardous waste permit, may continue to operate if Part A of their permit application is submitted no later than six months after the date of publication of regulations by the EPA under RCRA, which first require them to comply with the standards in Subchapter E of this chapter (relating to Interim Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities), or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities); or 30 days after the date they first become subject to the standards in these subchapters, whichever first occur; or for generators who generate greater than 100 kilograms but less than 1,000 kilograms of hazardous waste in a calendar month and who process, store, or dispose of these wastes on-site, a Part A permit application shall be submitted to the EPA by March 24, 1987, as required by 40 Code of Federal Regulations (CFR) §270.10(e)(1)(iii). This subsection shall not apply to a facility if it has been previously denied a hazardous waste permit or if authority to operate the facility has been previously terminated. Applications filed under this section shall meet the requirements of §335.44 of this title. For purposes of this subsection,

a solid waste management facility is in existence if the owner or operator has obtained all necessary federal, state, and local preconstruction approvals or permits, as required by applicable federal, state, and local hazardous waste control statutes, regulations, or ordinances; and either:

(1) a continuous physical, on-site construction program has begun; or

(2) the owner or operator has entered into contractual obligations, which cannot be cancelled or modified without substantial loss, for construction of the facility to be completed within a reasonable time.

(d) No permit shall be required for:

(1) the processing or disposal of nonhazardous industrial solid waste, if the waste is processed or disposed on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced; the property is within 50 miles of the plant or operation; and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(2) the storage of nonhazardous industrial solid waste, if the waste is stored on property owned or otherwise effectively controlled by the owner or operator of the industrial plant, manufacturing plant, mining operation, or agricultural operation from which the waste results or is produced, and the waste is not commingled with waste from any other source or sources (An industrial plant, manufacturing plant, mining operation, or agricultural operation owned by one person shall not be considered an "other source" with respect to other plants and operations owned by the same person.);

(3) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in an elementary neutralization unit;

(4) the collection, storage, or processing of nonhazardous industrial solid waste, if the waste is collected, stored, or processed as part of a treatability study;

(5) the storage of nonhazardous industrial solid waste, if the waste is stored in a transfer facility in containers for a period of ten days or less, unless the executive director determines that a permit should be required in order to protect human health and the environment;

(6) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a publicly owned treatment works with discharges subject to regulation under the federal Clean Water Act, §402, as amended through October 4, 1996, if the owner or operator has a National Pollutant Discharge Elimination System permit and complies with the conditions of the permit;

(7) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater unit and is discharged in accordance with a Texas Pollutant Discharge Elimination System authorization issued under Texas Water Code, Chapter 26;

(8) the storage or processing of nonhazardous industrial solid waste, if the waste is stored or processed in a wastewater treatment unit that discharges to a publicly owned treatment works and the units are located at a noncommercial solid waste management facility;

(9) the storage or processing of nonhazardous industrial solid waste, if the waste is processed in a wastewater treatment unit that discharges to a publicly owned treatment works liquid wastes that

are incidental to the handling, processing, storage, or disposal of solid wastes at municipal solid waste facilities or commercial industrial solid waste landfill facilities; or [-]

(10) the land application, as defined in §321.405 of this title (relating to Definitions), or the disposal of dairy waste, as defined in §321.48 of this title (relating to Land Application of Dairy Waste), under emergency conditions, as defined in §321.48 of this title, in compliance with Chapter 321 of this title (relating to Control of Certain Activities by Rule).

(e) No permit shall be required for the on-site storage of hazardous waste by a person who meets the conditions for exemption for a very small quantity generator in 40 CFR §262.14 as adopted under §335.53 of this title (relating to General Standards Applicable to Generators of Hazardous Waste).

(f) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous waste by a person described in §335.41(b) - (d) of this title (relating to Purpose, Scope, and Applicability) or for the storage of hazardous waste under the provisions of 40 CFR §261.4(c) and (d) as adopted under §335.504 of this title (relating to Hazardous Waste Determination).

(g) No permit under this chapter shall be required for the storage, processing, or disposal of hazardous industrial waste or municipal hazardous waste that is generated or collected for the purpose of conducting treatability studies. Such samples are subject to the requirements in 40 CFR §261.4(e) and (f) as adopted under §335.504 of this title.

(h) A person may obtain authorization from the executive director for the storage, processing, or disposal of nonhazardous industrial solid waste in an interim status landfill that has qualified for interim status in accordance with 40 CFR Part 270, Subpart G, and that has complied with the standards in Subchapter E of this chapter, by complying with the notification and information requirements in §335.6 of this title (relating to Notification Requirements). The executive director may approve or deny the request for authorization or grant the request for authorization subject to conditions, which may include, without limitation, public notice and technical requirements. A request for authorization for the disposal of nonhazardous industrial solid waste under this subsection shall not be approved unless the executive director determines that the subject facility is suitable for disposal of such waste at the facility as requested. At a minimum, a determination of suitability by the executive director must include approval by the executive director of construction of a hazardous waste landfill meeting the design requirements of 40 CFR §265.301(a). In accordance with §335.6 of this title, such person shall not engage in the requested activities if denied by the executive director or unless 90 days' notice has been provided and the executive director approves the request except where express executive director approval has been obtained prior to the expiration of the 90 days. Authorization may not be obtained under this subsection for:

(1) nonhazardous industrial solid waste, the storage, processing, or disposal of which is expressly prohibited under an existing permit or site development plan applicable to the facility or a portion of the facility;

(2) polychlorinated biphenyl compounds wastes subject to regulation by 40 CFR Part 761;

(3) explosives and shock-sensitive materials;

(4) pyrophorics;

(5) infectious materials;

(6) liquid organic peroxides;

(7) radioactive or nuclear waste materials, receipt of which will require a license from the DSHS or the commission or any other successor agency; and

(8) friable asbestos waste unless authorization is obtained in compliance with the procedures established under §330.171(c)(3)(B) - (E) of this title (relating to Disposal of Special Wastes). Authorizations obtained under this subsection shall be effective during the pendency of the interim status and shall cease upon the termination of interim status, final administrative disposition of the subject permit application, failure of the facility to operate the facility in compliance with the standards set forth in Subchapter E of this chapter, or as otherwise provided by law.

(i) Owners or operators of hazardous waste management units must have permits during the active life (including the closure period) of the unit. Owners or operators of surface impoundments, landfills, land treatment units, and waste pile units that received wastes after July 26, 1982, or that certified closure (according to 40 CFR §265.115) after January 26, 1983, must have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under 40 CFR §270.1(c)(5) and (6), or obtain an order in lieu of a post-closure permit, as provided in subsection (m) of this section. If a post-closure permit is required, the permit must address applicable provisions of 40 CFR Part 264, and Subchapter F of this chapter (relating to Permitting Standards for Owners and Operators of Hazardous Waste Treatment, Storage, or Disposal Facilities) provisions concerning groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under this section.

(j) Upon receipt of the federal Hazardous and Solid Waste Act (HSWA) authorization for the commission's Hazardous Waste Program, the commission shall be authorized to enforce the provisions that the EPA imposed in hazardous waste permits that were issued before the HSWA authorization was granted.

(k) Any person who intends to conduct an activity under subsection (d) of this section shall comply with the notification requirements of §335.6 of this title.

(l) No permit shall be required for the management of universal wastes by universal waste handlers or universal waste transporters, in accordance with the definitions and requirements of Subchapter H, Division 5 of this chapter (relating to Universal Waste Rule).

(m) At the discretion of the commission, an owner or operator may obtain a post-closure order in lieu of a post-closure permit for interim status units, a corrective action management unit unless authorized by a permit, or alternative corrective action requirements for contamination commingled from RCRA and solid waste management units. The post-closure order must address the facility-wide corrective action requirements of §335.167 of this title (relating to Corrective Action for Solid Waste Management Units) and groundwater monitoring requirements of §335.156 of this title (relating to Applicability of Groundwater Monitoring and Response).

(n) Except as provided in subsection (d)(9) of this section, owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works are required to obtain a permit under this subchapter. By June 1, 2006, owners or operators of existing commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works must have a permit issued under this subchapter or obtain a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges) to continue operating. A general permit issued under Chapter 205 of

this title will authorize operations until a final decision is made on the application for an individual permit or 15 months, whichever is earlier. The general permit shall authorize operations for a maximum period of 15 months except that authorization may be extended on an individual basis in one-year increments at the discretion of the executive director. Should an application for a general permit issued under Chapter 205 of this title be submitted, the applicant shall also submit to the commission, by June 1, 2006, the appropriate information to demonstrate compliance with financial assurance requirements for closure of industrial solid waste facilities in accordance with Chapter 37, Subchapter P of this title (relating to Financial Assurance for Hazardous and Nonhazardous Industrial Solid Waste Facilities). Owners or operators of commercial industrial solid waste facilities that receive industrial solid waste for discharge to a publicly owned treatment works operating under a general permit issued under Chapter 205 of this title shall submit an application for a permit issued under this subchapter prior to September 1, 2006.

(o) Treatment, storage, and disposal facilities that are otherwise subject to permitting under RCRA and that meet the criteria in paragraphs (1) or paragraph (2) of this subsection, may be eligible for a standard permit under Subchapter U of this chapter (relating to Standards for Owners and Operators of Hazardous Waste Facilities Operating Under a Standard Permit) if they satisfy one of the two following criteria:

(1) facility generates hazardous waste and then non-thermally treats and/or stores hazardous waste on-site; or

(2) facility receives hazardous waste generated off-site by a generator under the same ownership as the receiving facility.

(p) No permit under this chapter shall be required for a reverse distributor accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals, as defined in §335.751 of this title (relating to Definitions) in compliance with Subchapter W of this chapter (relating to Management Standards for Hazardous Waste Pharmaceuticals). Reverse distributors accumulating potentially creditable hazardous waste pharmaceuticals and evaluated hazardous waste pharmaceuticals in compliance with Subchapter W of this chapter shall notify the executive director in accordance with §335.6 of this title.

#### *§335.6. Notification Requirements.*

(a) Notification of industrial solid waste and municipal hazardous waste activities not authorized by a permit. Any person who intends to store, process, recycle, or dispose of industrial solid waste without a permit, as authorized by §335.2(d), (f), or (h) of this title (relating to Permit Required) or §335.24 of this title (relating to Requirements for Recyclable Materials and Nonhazardous Recyclable Materials), shall notify the executive director using a method approved by the executive director, that storage, processing, recycling, or disposal activities are planned.

(1) A person required to notify of activities under this subsection shall notify at least 90 days before conducting an activity under this subsection.

(2) A person required to notify under this section shall submit additional information, upon request, to the executive director to demonstrate that storage, processing, recycling, or disposal is compliant with the terms of this chapter, including but not limited to information listed under subsection (b)(3) of this section.

(b) Duty to notify of changed and new information. Any person who stores, processes, or disposes of municipal hazardous waste or industrial solid waste shall promptly notify the executive director using a method approved by the executive director of:



(1) any new information concerning storage, processing, and disposal described in paragraph (3) of this subsection; and

(2) any changes to information previously submitted or reported under subsection (a) of this section:

(A) authorized in any permit issued by the commission; or

(B) submitted or reported to the commission in any application filed with the commission.

(3) Information concerning storage, processing, and disposal required to be submitted under this subsection includes and is not limited to:

(A) waste composition;

(B) waste management methods;

(C) facility engineering plans and specifications; and

(D) the geology where the facility is located.

(4) A person who notifies the executive director under this section shall immediately document and notify the executive director within 90 days of changes in information previously provided and additional information that was not provided.

(c) Generator registration.

(1) Any person, by site, that generates in any calendar month more than 100 kilograms of non-acute hazardous waste, more than 1 kilogram of acute hazardous waste, or more than 100 kilograms of industrial Class 1 waste shall register in a method approved by the executive director.

(2) Large quantity generators must meet the requirements of this subsection using the electronic interface provided by the executive director unless:

(A) the executive director has granted a written request to use paper forms or an alternative notification method; or

(B) the software does not have features capable of meeting the requirements.

(3) Notifications submitted pursuant to this section shall be in addition to information provided in any permit applications required by §335.2 of this title, or any reports required by §335.9 of this title (relating to Recordkeeping and Annual Reporting Procedures Applicable to Generators), §335.10 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste), and §335.13 of this title (relating to Recordkeeping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste).

(4) If waste is recycled on-site or managed pursuant to §335.2(d)(1) - (4) or (6) - (9) of this title, the generator must also comply with the notification requirements specified in subsection (h) of this section.

(5) The information submitted pursuant to the notification requirements of this subchapter and to the additional requirements of §335.503 of this title (relating to Waste Classification and Waste Coding Required) shall include, but is not limited to:

(A) a description of the waste including:

(i) a description of the process generating the waste; and

(ii) the composition of the waste;

(B) a hazardous waste determination in accordance with §335.504 of this title (relating to Hazardous Waste Determination), which includes the appropriate United States Environmental Protection Agency (EPA) hazardous waste number(s) described in 40 Code of Federal Regulations (CFR) Part 261;

(C) the disposition of each solid waste generated, if subject to the notification requirement of this subsection, including:

(i) whether the waste is managed on-site and/or off-site;

(ii) a description of the type and use of each on-site waste management facility unit;

(iii) a listing of the wastes managed in each unit; and

(iv) whether each unit is permitted, or qualifies for an exemption, under §335.2 of this title.

(d) Transporter registration. Any person who transports hazardous waste or industrial Class 1 waste shall notify the executive director of such activity by registering using a method approved by the executive director. A person, by site, that generates in any calendar month less than 100 kilograms of non-acute hazardous waste, less than 1 kilogram of acute hazardous waste, and less than 100 kilograms of industrial Class 1 waste and only transports their own waste is not required to comply with this subsection.

(e) Transfer facility registration. A person that intends to operate a transfer facility in accordance with §335.94 of this title (relating to Transfer Facility Requirements) shall notify the executive director of such activity by registering using a method approved by the executive director.

(f) Waste analysis. Any person who ships, stores, processes, or disposes of industrial solid waste or hazardous waste shall provide the chemical analysis of the solid waste performed in accordance with Subchapter R of this chapter (relating to Waste Classification) to the executive director upon written request.

(g) Notification prior to facility expansion. Any person who stores, processes, or disposes of industrial solid waste or municipal hazardous waste shall notify the executive director in writing of any activity or facility expansion not authorized by permit, at least 90 days prior to conducting such activity. Such person shall submit to the executive director upon request such information as may reasonably be required to enable the executive director to determine whether such activity is compliant with this chapter.

(h) Notification of recycling activities. Any person who intends to ship off-site or transfer to another person for recycling, or who conducts or intends to conduct the recycling of, industrial solid waste, municipal hazardous waste, recyclable materials, or nonhazardous recyclable materials as defined in §335.24 of this title or Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and who is required to notify under §335.24 of this title or Subchapter H of this chapter shall notify the executive director using a method approved by the executive director.

(1) A person that is required to notify under this subsection shall include, at a minimum, the following information:

(A) the type(s), classification(s), Texas waste code(s) and EPA hazardous waste number(s) described in 40 CFR Part 261, if any, of each industrial solid waste and municipal hazardous waste intended to be recycled;

(B) the method of storage prior to recycling; and

(C) the nature of the recycling activity.

(2) A person required to notify the executive director of the intent to recycle under this subsection may begin recycling activities 90 days after submitting notification of intent to recycle under this subsection if the executive director has not requested additional information in response to the notification or upon receipt of an acknowledgment from the executive director.

(i) Notification of operating under the small quantity burner exemption. The owner or operator of a facility qualifying for the small quantity burner exemption under 40 CFR §266.108 must provide a one-time signed, written notification to the EPA and to the executive director indicating the following:

(1) the combustion unit is operating as a small quantity burner of hazardous waste;

(2) the owner and operator are in compliance with the requirements of 40 CFR §266.108, §335.221(a)(19) of this title (relating to Applicability and Standards) and this subsection; and

(3) the maximum quantity of hazardous waste that the facility may burn as provided by 40 CFR §266.108(a)(1).

(j) Notification of used oil activities. Notification and regulation requirements on nonhazardous used oil, oil made characteristically hazardous by use (instead of mixing), used oil generated by a very small quantity generator, and household used oil after collection that will be recycled shall notify in accordance with Chapter 324 of this title (relating to Used Oil).

(k) Notification exemption for the disposal of animal carcasses. A landowner who disposes of domestic or exotic animal carcasses and who complies with a certified water quality management plan developed for their site under Texas Agriculture Code, §201.026(f) as added by Acts 2001, 77th Legislature, Chapter 1189, §1 (relating to Nonpoint Source Pollution) is exempt from the notification requirements of subsections (a) and (b) of this section.

(l) Healthcare facilities notification. A person required to notify the executive director under §335.755 of this title (relating to Standards for Healthcare Facilities Managing Non-Creditable Hazardous Waste Pharmaceuticals) shall notify using a method approved by the executive director.

(m) Reverse distributor registration. A person required to notify the executive director under §335.771 of this title (relating to Standards for the Management of Potentially Creditable Hazardous Waste Pharmaceuticals and Evaluated Hazardous Waste Pharmaceuticals by Reverse Distributors) shall register using a method approved by the executive director.

(n) Notification exemption for land application or disposal of dairy waste under emergency conditions. A person land applying, as the term land application is defined in §321.405 of this title (relating to Definitions), or disposing of dairy waste, as defined in §321.48 of this title (relating to Land Application of Dairy Waste), under emergency conditions, as defined in §321.48 of this title, in compliance with Chapter 321, of this title (relating to Control of Certain Activities by Rule) is exempt from the notification requirements of this section.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Filed with the Office of the Secretary of State on February 14, 2025.

TRD-202500562

Charmaine Backens

Deputy Director, Environmental Law Division

Texas Commission on Environmental Quality

Earliest possible date of adoption: March 30, 2025

For further information, please call: (512) 239-2678

## TITLE 34. PUBLIC FINANCE

### PART 11. TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

#### CHAPTER 302. GENERAL PROVISIONS RELATING TO THE TEXAS EMERGENCY SERVICES RETIREMENT SYSTEM

##### 34 TAC §302.1

The Board of Trustees (the "Board") of the Texas Emergency Services Retirement System (the "System") proposes an amendment to Chapter 302, General Provisions Relating to the Texas Emergency Services Retirement System, 34 Texas Administrative Code (TAC) §302.1 to add a definition for the term "spouse" as used for purposes of the System, including eligibility for spousal death benefits, and to set forth the requirements for proving the existence of an informal marriage. The purpose of this amendment is to ensure the efficient administration of the System by establishing clear requirements for proving a legally recognized spousal relationship exists and eliminating any ambiguity or uncertainty for the member, beneficiary or the System.

**FISCAL NOTE ON STATE AND LOCAL GOVERNMENTS.** Jessica Almaguer, Executive Director of the Texas Emergency Services Retirement System, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal impact to state or local governments as a result of enforcing or administering these amendments as proposed under Texas Government Code §2001.024(a)(4) because the amendments do not impose a cost on state or local governments.

**LOCAL EMPLOYMENT IMPACT.** Ms. Almaguer has determined that the proposed amendments would not impact a local economy. Therefore, a local employment impact statement is not required under Texas Government Code §2001.022 and §2001.024(a)(6).

**PUBLIC BENEFIT AND COST NOTE.** Ms. Almaguer has determined under Texas Government Code §2001.024(a)(5) that for each of the first five years the proposed amendments would be in effect, the public benefit will be the cleanup, clarification, and refinement of continuing education requirements and the enhanced alignment of continuing education activities with content that directly concerns occupational therapy and ensures the health, safety, and welfare of the public. There would not be an additional anticipated economic cost to persons required to comply with the proposed amendments.

**ECONOMIC IMPACT ON SMALL BUSINESSES, MICRO-BUSINESSES, AND RURAL COMMUNITIES.** Ms. Almaguer has determined there would be no costs or adverse economic effects on small businesses, micro-businesses, or rural communities. Therefore, no economic impact statement or regulatory flexibility analysis is required under Texas Government Code §2006.002.

# Texas Commission on Environmental Quality



## ORDER ADOPTING AMENDED RULES

**Docket No. 2023-1229-RUL**

**Rule Project No. 2023-139-321-OW**

On July 9, 2025, the Texas Commission on Environmental Quality (Commission) adopted amended rules in 30 Texas Administrative Code (TAC) Chapter 321, Subchapter B concerning Concentrated Animal Feeding Operations and Subchapter Q concerning Land Application of Dairy Waste Authority, and in 30 TAC Chapter 335 concerning Industrial Solid Waste and Municipal Hazardous Waste. The proposed rules were published for comment in the February 28, 2025, issue of the *Texas Register* (50 TexReg 1632).

IT IS THEREFORE ORDERED BY THE COMMISSION that the amended rules are hereby adopted. The Commission further authorizes staff to make any non-substantive revisions to the rules necessary to comply with *Texas Register* requirements. The adopted rules and the preamble to the adopted rules are incorporated by reference in this Order as if set forth at length verbatim in this Order.

This Order constitutes the Order of the Commission required by the Administrative Procedure Act, Tex. Gov't Code Ann., Chapter 2001 (West 2016).

If any portion of this Order is for any reason held to be invalid by a court of competent jurisdiction, the invalidity of any portion shall not affect the validity of the remaining portions.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

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Brooke T. Paup, Chairwoman

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Date Signed