

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



## A RESOLUTION

in the matter of a Renewal with Amendments of a Texas Pollutant Discharge Elimination System / State-only General Permit which authorizes manure, sludge, and wastewater discharge into or adjacent to water in the state only during chronic or catastrophic rainfall or catastrophic conditions by concentrated animal feeding operations, General Permit No. TXG920000; TCEQ Docket No. 2023-1733-MIS

**WHEREAS**, under Texas Water Code (TWC) § 26.121, no person may discharge waste or pollutants into or adjacent to any water in the state except as authorized by a rule, permit, or order issued by the Texas Commission on Environmental Quality (TCEQ or commission);

**WHEREAS**, under TWC § 26.027, the TCEQ has the authority to issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to waters in the state;

**WHEREAS**, under TWC § 26.040, the TCEQ has the authority to issue a general permit to authorize the discharge of waste into or adjacent to waters in the state;

**WHEREAS**, a renewal with amendments of a Texas Pollutant Discharge Elimination System (TPDES) / State-only general permit which authorizes manure, sludge, and wastewater discharge into or adjacent to water in the state only during chronic or catastrophic rainfall or catastrophic conditions by concentrated animal feeding operations (CAFOs), was drafted and proposed by the Executive Director and is attached as Exhibit A;

**WHEREAS**, the TCEQ received public comments on the general permit and drafted a Response to Public Comment, which is attached as Exhibit B;

**WHEREAS**, the Commission reviewed in accordance with Texas Natural Resources Code § 33.205 and 30 TAC § 205.5(f) the changes to the general permit for consistency with the Texas Coastal Management Program (CMP) and found that the general permit is consistent with applicable CMP goals and policies and that the general permit will not adversely affect any applicable coastal natural resource areas as identified in the CMP;

**WHEREAS**, the Commission determined in accordance with TWC § 26.040(a)(1) - (4) that the general permit would authorize dischargers who engage in the same or substantially similar types of operations, discharge the same types of waste, are subject to the same requirements regarding effluent limitations or operating conditions, and are subject to the same or similar monitoring requirements;

**WHEREAS**, the Commission finds in accordance with TWC § 26.040(a)(5) that the general permit would apply to dischargers who are more appropriately regulated under a general permit than under individual permits and that:

(A) the general permit has been drafted to assure that it can be readily enforced and that the Commission can adequately monitor compliance with the terms of the general permit; and

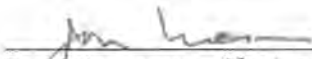
(B) the category of discharges covered by the general permit will not include a discharge of pollutants that will cause significant adverse effects to water quality; and

**THEREFORE**, after consideration of all public comments and the responses to such comments, the Commission, by this resolution, hereby issues the general permit, attached as Exhibit A, as recommended by the Executive Director and as approved by the Commission during its June 26, 2024, public meeting. The Commission, by this resolution, also hereby issues the Executive Director's Response to Comments as approved by the Commission during its June 26, 2024, public meeting as the Commission's Response to Public Comment, attached as Exhibit B.

Furthermore, the Commission directs staff to make any non-substantive changes to the general permit and the Commission's Response to Public Comments to satisfy *Texas Register* format requirements and requests that the general permit and Commission's Response to Public Comments be made available to the public in accordance with the requirements of TWC § 26.040(d) and 30 TAC § 205.3(e).

It is so **RESOLVED**.

TEXAS COMMISSION ON  
ENVIRONMENTAL QUALITY

  
\_\_\_\_\_  
Jon Niermann, Chairman

7/16/24  
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Date Signed

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## **COMMISSIONER'S RESPONSE TO PUBLIC COMMENT ON GENERAL PERMIT NO. TXG920000**

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The Executive Director (ED) of the Texas Commission on Environmental Quality (TCEQ or commission) files this Response to Public Comment (Response) on Concentrated Animal Feeding Operations (CAFOs) general permit TXG920000 (CAFO GP). The CAFO GP authorizes the discharge of manure, sludge, and wastewater under chronic or catastrophic rainfall conditions or events.

As required by Texas Water Code (TWC), § 26.040(d) and 30 Texas Administrative Code (TAC) Section (§) 205.3(c), before a general permit is issued, the ED must prepare a response to all timely, relevant and material, or significant comments. The response must be made available to the public and filed with the Office of the Chief Clerk at least ten days before the Commission considers the approval of the general permit. This response addresses all timely received public comments, whether or not withdrawn. Timely public comments were received from Jorge (George) Gonzalez, General Manager, Duval County Groundwater Conservation District (DCGCD); Terry D Stelly, President, Southeast Texas Clean Air & Water, Inc. (CAW); Matt Davis, on behalf of the Texas Association of Dairymen, the Texas Cattle Feeders Association, the Texas Farm Bureau, the Texas Pork Producers Association, and the Texas Poultry Federation and Affiliates (CAFO Industry Groups); and Marsha Shoemaker, on behalf of Enviro-Ag Engineering Inc.

If you need more information about this permit or the wastewater permitting process, please call the TCEQ Office of Public Assistance at 1-800-687-4040. Additionally, general information about the TCEQ can be found at our website at <https://www.tceq.texas.gov/>.

### **BACKGROUND**

This is a renewal with amendment of a Texas Pollutant Discharge Elimination System / State General Permit authorizing CAFO discharges in the state of Texas. The draft permit will replace the current permit that will expire on July 20, 2024.

The CAFO GP contains requirements related to the collection, handling, storage and beneficial use of manure, wastewater, and sludge. These requirements were established based on state and federal rules, the NRCS Field Operations Technical Guidance, and the Animal Waste Management Field Handbook.

No discharge of manure, sludge, or wastewater from a CAFO into or adjacent to surface water in the state is allowed, except when chronic or catastrophic rainfall causes an overflow from a retention control structure (RCS) that has been properly designed, constructed, operated, and maintained. Any swine, veal, or poultry CAFO subject to the new source performance standards in 40 CFR § 412.46 must have an RCS designed and constructed so that no discharge occurs. Any other CAFOs must have an RCS designed and constructed to meet or exceed the capacity required to contain the runoff and direct precipitation from the 25-year, 24-hour rainfall event.

Land application of manure, sludge, and wastewater must be in accordance with a Nutrient Management Plan (NMP) that was developed by a certified nutrient management specialist, based on United States Department of Agriculture/Natural Resource Conservation Service (NRCS) Practice Standard 590, which provides the permittee the necessary information to properly manage the amount, form, placement and timing for the application of nutrients to the Land Management Units (LMUs). Vegetative buffer

strips shall be maintained in accordance with NRCS Practice Standard Code 393. The minimum buffer shall be no less than 100 feet of vegetation to be maintained between land application areas and all surface water in the state.

CAFOs that are located in a segment impaired for bacteria, nutrients, and/or pathogens, must adhere to the following requirements:

- (1) land application must be consistent with a NMP certified in accordance with NRCS Practice Standard Code 590 using the phosphorus index rating for impaired waters.
- (2) The permittee must install and maintain one of the following between the land application area and the main stem of the impaired segment: a 200-foot vegetative buffer; or a 100-foot vegetative buffer and a filter strip or vegetative barrier, according to NRCS Practice Standard Codes 393 or 601.

The discharge of wastewater from irrigation is prohibited, except a discharge resulting from irrigation events associated with imminent overflow conditions. Precipitation-related runoff from land application areas is allowed by the permit when land application practices are consistent with a nutrient management plan or nutrient utilization plan.

The CAFO GP contains additional requirements or prohibition of coverage under the general permit for CAFOs located in an impaired segment listed on the current EPA-approved CWA § 303(d) list of impaired waters. The following CAFOs are not eligible for coverage under the CAFO GP:

- (1) a dairy CAFO located in a major sole source impairment zone; and
- (2) any CAFO where any part of the production area or LMU is located in a 303(d) listed segment where a Total Maximum Daily Load (TMDL) implementation plan has been adopted by the commission that establishes additional water quality protection measures for CAFOs which are not required by the CAFO GP.

### **PROCEDURAL BACKGROUND**

TCEQ published notice of the draft CAFO GP to solicit public comment in the *Amarillo Globe-News*, *Lubbock Avalanche Journal*, and *Houston Chronicle* on January 26, 2024, and the *Texas Register* on February 9, 2024. TCEQ conducted a public meeting on February 20, 2024, to take oral and written testimonies. The public comment period ended on March 11, 2024. TCEQ also took public comment via electronic comment.

### **COMMENTS AND RESPONSES**

#### **Comment #1**

Matt Davis, on behalf of the CAFO Industry Groups, commented that the CAFO Industry Groups continue their support and approval of the CAFO GP.

#### **Response #1**

TCEQ acknowledges the supportive comment.

#### **Comment #2**

Matt Davis, on behalf of the CAFO Industry Groups, and Marsha Shoemaker, on behalf of Enviro-Ag Engineering Inc., commented that the renewal period should not be changed from 180 days due to the limited number of consultants in the CAFO industry, the number of permitted facilities, and the role Enviro-Ag Engineering Inc plays in submittal



of renewal applications. According to Ms. Shoemaker, the renewal requires the submittal of full notice of intent and core data form. Moreover, Ms. Shoemaker said that during the renewal cycle, changes to the facility cannot be made; therefore, the information required by the NOI is redundant because the permitting information that is part of the NOI and facility renewal is already captured in the TCEQ Water Quality Database.

Therefore, both commenters said that if the renewal period is changed to 90 days as proposed in the draft permit, then the amount of information to be collected on the NOI should be reduced, and Ms. Shoemaker requested that the NOI submittal requirements be condensed to a "renewal" notice of intent indicating no changes have been made, as this will suffice.

#### **Response #2**

In response to this comment, the proposal to change the renewal period from 180 days to 90 days in the CAFO GP is withdrawn. Therefore, Part II.F.3 that relates to Application Following Renewal will not change from the current CAFO GP.

TCEQ notes that the contents of the NOI are listed both in federal and state regulations, therefore, it cannot be condensed. The requirements in Part II.F.3 of the CAFO GP are mandatory.

"Upon issuance of this general permit, all facilities that wish to continue authorization, must submit a NOI on forms provided by the Executive Director in accordance with the requirements of this general permit, within 180 days after the effective date. Failure to submit a NOI by the deadline will result in expiration of the existing authorization to operate under the expired general permit."

Part II.C.4 of the GP requires that the NOI includes at a minimum the following:

- (a) the legal name and address of the applicant;
- (b) the facility name and address;
- (c) the location of the CAFO;
- (d) the latitude and longitude of the production area;
- (e) a description and the size of the CAFO facility;
- (f) the number and type of animals and their housing situation;
- (g) the type of containment and storage;
- (h) each retention control structure capacity;
- (i) the estimated amount of manure and wastewater generated per year;
- (j) the estimated amount of manure and wastewater transferred off-site per year;
- (k) a description of each LMU including:
  - (1) total acreage of each LMU available for land application of manure or wastewater;
  - (2) the estimated land application rate; and
- (l) a topographic map or other diagram as specified in the instructions to the NOI.

### **Comment #3**

Marsha Shoemaker, on behalf of Enviro-Ag Engineering Inc., commented that the requirement in Part III A.6.(c)(4)(vi) of the CAFO GP should either be removed or modified. The requirement states:

“The anaerobic digester and any appurtenances such as recirculation basins and mixing pits shall be certified in accordance with 30 TAC § 321.38(g)(2).”

### **Response #3**

The CAFO rule in 30 TAC § 321.38(g)(2) requires that new construction and all structural modifications of an existing RCS be certified to meet the requirements for lack of hydrologic connection or have a liner.

The CAFO rule in 30 TAC § 321.32(51) also defines retention control structure (RCS) as:

“any basin, pond, pit, tank, conveyance, or lagoon used to hold, store, or treat manure, wastewater, and sludge. The term RCS does not include conveyance systems such as irrigation piping or ditches that are designed and maintained to convey but not store any manure, or wastewater, nor does it include cooling ponds located in the production area.”

Therefore, the requirement in Part III A.6.(c)(4)(vi) of the CAFO GP is applicable to the components of the anaerobic digester.

No changes were made to the CAFO GP as a result of this comment.

### **Comment #4**

Matt Davis, on behalf of the CAFO Industry Groups, commented that the underlined text should be added to the definition of groundwater:

Subsurface potable water that occurs below the water table in soils and geologic formations that are saturated, other than underflow of a stream or an underground stream or subsurface moisture.

### **Response #4**

The proposed definition is not consistent with 30 TAC § 321.32(24) or the definition of water in the state (including groundwater) in TWC § 26.001(5), neither of which mention quality/potability. It also doesn't appear to align with TWC § 26.401 regarding groundwater protection for usable and potentially usable groundwater supplies.

No changes were made to the CAFO GP as a result of this comment.

### **Comment #5**

Matt Davis, on behalf of the CAFO Industry Groups, commented that the underlined text that referenced the Agriculture Code be added to the definition of Nuisance:

Any discharge of air contaminant(s), including but not limited to odors, of sufficient concentration and duration that are or may tend to be injurious to or which adversely affects human health or welfare, animal life, vegetation, or property, or which interferes with the normal use and enjoyment of animal life, vegetation, or property and which does not otherwise comply with Chapter 251 of the Texas Agriculture Code.

**Response #5**

The definition of nuisance as used in the CAFO GP is consistent with the CAFO rules in 30 TAC § 321.32(36), and 30 TAC § 101.4 that relates to Nuisance, which states:

No person shall discharge from any source whatsoever one or more air contaminants or combinations thereof, in such concentration and of such duration as are or may tend to be injurious to or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property.

The referenced Title 8 Chapter 251 of the Texas Agriculture Code relates to Effect of Nuisance Actions and Governmental Requirements on Certain Agricultural Operations. According to the information from the Texas Department of Agriculture website, the purpose of the chapter is to reduce the loss to the state of its agricultural resources by limiting the circumstances under which agricultural operations may be legally threatened, subject to suit, regulated, or otherwise declared to be a nuisance. (Agric. Code Section 251.001.)

The proposed change is inconsistent with General Air Quality rules and would broaden the scope of the GP to include actions outside TCEQ's jurisdiction regarding wastewater permitting. The proposed change to the definition would create inconsistencies with other TCEQ programs and is therefore not appropriate for consideration under the CAFO GP renewal action.

No changes were made to the CAFO GP as a result of this comment.

**Comment #6**

Matt Davis, on behalf of the CAFO Industry Groups, commented that the underlined text be added to the definition of water in the state:

On-channel lakes, 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 non-navigable, 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, but not including diffuse water or off-channel impoundments.

**Response #6**

As used in the CAFO GP, the definition of water in the state is consistent with the CAFO rules in 30 TAC § 321.32(63), which is consistent with the TWC § 26.001(5).

No changes were made to the CAFO GP as a result of this comment.

**Comment #7**

Terry Stelly, on behalf of the CAW, commented that the organization is concerned that the GP is for discharging manure, sludge, and wastewater into or adjacent to the waters by CAFOs.

**Response #7**

As noted in the background section above, no discharge of manure or wastewater is allowed from a CAFO into water in the state, except during chronic or catastrophic

rainfall or catastrophic conditions, from a CAFO that is properly designed, constructed, operated, and maintained under the provisions of the GP. Manure, sludge, and wastewater generated by a CAFO shall be retained and used in an appropriate and beneficial manner as provided in the GP.

Unless otherwise limited, manure, sludge, or wastewater may be discharged from a land management unit (LMU) or a retention control structure (RCS) into or adjacent to water in the state from a CAFO authorized under the GP resulting from any of the following conditions:

- a discharge of manure, sludge, or wastewater that the permittee cannot reasonably prevent or control resulting from a catastrophic condition other than a rainfall event;
- overflow of manure, sludge, or wastewater from an RCS resulting from a chronic/catastrophic rainfall event; or
- a chronic/catastrophic rainfall discharge from an LMU that occurs because the permittee takes measures to de-water the RCS in accordance with Part III.A.10(b) of the general permit, relating to imminent overflow.

No changes were made to the CAFO GP as a result of this comment.

#### **Comment #8**

Terry Stelly, on behalf of the CAW, commented that there are current methods of preventing discharges from a CAFO by increasing treatment capacity before directly being discharged to state waters, and provided links to research journal papers for references on topics such as agricultural and biological sciences, and animal feeding operations.

#### **Response #8**

Based on state and federal rules, the CAFO GP prohibits discharges except under specific circumstances and requires minimum RCSs capacities based on the design rainfall event for the facility location. Permittees have the option to exceed the minimum requirements for their facilities.

Regarding the referenced documents from the commenter, the commission acknowledges these sources of information and does not prohibit its application by the permittee, to the extent that it is consistent with or exceeds existing rules and requirements.

No changes were made to the CAFO GP as a result of this comment.

#### **Comment #9**

Jorge Gonzalez, on behalf of the DCGCD, commented on Sweden Ranch, that he is concerned with the total number of head of cattle to be authorized, the potential impact of the beef cattle operation on water use and depletion of groundwater, the lack of hydrological study to measure the impact of the proposed operation on groundwater aquifers, the contamination of surface water and groundwater from runoff; and the effect on human health and the environment.

#### **Response #9**

The ED acknowledges these site-specific comments on Sweden Ranch, LP, Authorization Number TXG921649. These comments were addressed in the authorization that was issued by the Executive Director and mailed out on March 15, 2024. A copy of the final



technical summary that includes the responses to the comments can be downloaded from the TCEQ website at <https://www14.tceq.texas.gov/epic/eCID/index.cfm?clear=Y>.

No changes were made to the CAFO GP as a result of this comment.

#### **Comment #10**

Jorge Gonzalez, on behalf of the DCGCD, commented that the definition of Major Sole Source Impairment Zone that is limited to municipalities of 140,000 or over, should be expanded to include smaller towns and cities with fewer people since they are equally affected by animal feeding operations (AFOs), and recommended that the definition be deleted from the GP.

#### **Response #10**

The definition of the Major Sole Source Impairment Zone is consistent with the Texas Water Code § 26.502 definition below.

“This subchapter applies only to a feeding operation confining cattle that have been or may be used for dairy purposes, or otherwise associated with a dairy, including cows, calves, and bulls, in a major sole source impairment zone. In this subchapter, “major sole source impairment zone” means a watershed that contains a reservoir:

- A. that is used by a municipality as a sole source of drinking water supply for a population, inside and outside of its municipal boundaries, of more than 140,000; and
- B. at least half of the water flowing into which is from a source that, on the effective date of this subchapter, is on the list of impaired state waters adopted by the commission as required by 33 U.S.C. Section 1313(d), as amended:
  - 1) at least in part because of concerns regarding pathogens and phosphorus; and
  - 2) for which the commission, at some time, has prepared and submitted a total maximum daily load standard.”

No changes were made to the CAFO GP as a result of this comment.

#### **Comment #11**

Jorge Gonzalez, on behalf of the DCGCD, commented that the definition of the Protection Zone of a Sole-Source Surface Drinking Water Supply should be amended to include occasional streams, all rivers supplying the Sole-Source Surface Drinking Water Supply rather than just 3 miles upstream.

Furthermore, it was recommended that there should be a corresponding protection for Sole-Source Groundwater Drinking Water Supplies, and that regulations should be added to protect groundwater from pollution by AFOs.

#### **Response #11**

The definition of Protection Zone of a Sole-Source Surface Drinking Water Supply as defined in the CAFO GP is consistent with the Texas Surface Water Quality Standards in 30 TAC § 307.3 (53).

Protection zone--Any area within the watershed of a sole-source surface drinking water supply that is:

- (A) within two miles of the normal pool elevation of a body of surface water that is a sole-source surface drinking water supply;
- (B) within two miles of that part of a perennial stream that is:
  - (i) a tributary of a sole-source surface drinking water supply; and
  - (ii) within three linear miles upstream of the normal pool elevation of a sole-source surface drinking water supply; or
- (C) within two miles of that part of a stream that is a sole-source surface drinking water supply, extending three linear miles upstream from the water supply intake (Texas Water Code, § 26.0286).

Appendix B in 30 TAC Chapter 307 includes the list of current Sole-Source Surface Drinking Water Supplies.

Additional information for delineating surface and groundwater protection zone can be obtained from the US EPA website at:

<https://www.epa.gov/sourcewaterprotection/delineate-source-water-protection-area>.

No changes were made to the CAFO GP as a result of this comment.

#### **Comment #12**

Jorge Gonzalez, on behalf of the DCGCD, commented that the definition of Wellhead Protection Structure allows for easily degradable materials such as plywood and plastics, and does not expressly require inspections and maintenance to ensure that they retain their ability to fulfill their intended purpose.

#### **Response #12**

Part III.A.3 of the CAFO GP that relates to the Recharge Feature Certification (RFC) includes the guidelines for the development of the RFC, and the process for identifying any natural or artificial recharge features in a CAFO; and the required protective measures.

Part III.A.3(b) of the CAFO GP states:

If the recharge feature certification identifies the presence of recharge features, the applicant shall have protective measures developed, signed, and sealed by a licensed Texas Professional Engineer, or licensed Texas Professional Geoscientist, as appropriate and in conformance with the Texas Engineering Practices Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts. The protective measures must prevent impacts to an aquifer from any recharge features present. The protective measures must include at least one of the following:

- (1) measures to protect each located recharge feature, such as impervious cover, berms, buffer zones, or other equivalent protective measures; or
- (2) a detailed groundwater monitoring plan, in accordance with Part III.A.16(b); or
- (3) provisions for any other similar method or approach demonstrated by the applicant to be protective of any associated recharge feature and approved by the Executive Director

No changes were made to the CAFO GP as a result of this comment.

#### **Comment #13**

Jorge Gonzalez, on behalf of the DCGCD, commented that Part II.C, which relates to obtaining authorization by a CAFO, should be amended to require that applicants seeking authorization under the GP to submit notice, NOI, all relevant studies and data to the Groundwater Conservation District of where the CAFO is to be located for review. Then, the TCEQ can take final action on the NOI, to either approve or deny it based on the recommendation of the GCD. According to the commenter, the GCD has local knowledge of the conditions where the AFO will be located, and therefore, should be allowed more than just the public comment period to provide input to the TCEQ.

### **Response #13**

The provisions in Part II.C are consistent with the rules in 30 TAC Chapter 205, General Permits for Waste Discharges. Part II.C.2(d) through (k) of the CAFO GP include the public participation process for permitting under the CAFO GP.

TCEQ appreciates GCD interest in these types of activities. GCD and members of the public may participate in the environmental permitting process by any of the following means:

- 1) contact the Public Education Program of the TCEQ by Telephone at: 800-687-4040,
- 2) request to be placed on (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county by sending the request to: Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087,
- 3) contact program directly to request specific applications (e.g., in counties of interest), or
- 4) submit a Public Information Request to the TCEQ through the webpage at <https://www.tceq.texas.gov/agency/data/records-services/reqinfo.html>.

Part II.C.(2)(e) and Part II.C.(3)(c) of the CAFO GP include the comment period for new, significant expansion of an existing facility or a substantial change to the terms of the NMP. During this time, the public will have the opportunity to submit comments or request a public meeting on the permit action.

Part I of the CAFO GP defines recharge feature as:

Those natural or artificial features either on or beneath the ground surface at the site under evaluation that provide or create a significant hydrologic connection between the ground surface and the underlying groundwater within an aquifer. Significant artificial features include, but are not limited to, wells and excavation or material pits. Significant natural hydrologic connections include, but are not limited to: faults, fractures, sinkholes, or other macro pores that allow direct surface infiltration; a permeable or shallow soil material that overlies an aquifer; exposed geologic formations that are identified as an aquifer; or a water course bisecting an aquifer.

These features, if present, must be protected by buffer zones. Part III.4 of the CAFO GP requires that a Recharge Feature Certification be prepared and certified by a Licensed Texas Professional Engineer or Professional Geoscientist with protective measures, in the form of best management practices (BMPs) identified in the report, which are designed to avoid adverse impacts to recharge features and associated groundwater formations. All RCSs and settling basins must be certified in accordance with TCEQ guidelines for soil liners.

Part III.A.6 of the CAFO GP includes the RCS design and construction requirements which ensures adequate protection of groundwater.

The CAFO GP in Part III.A.6.(b) requires that each RCS is designed and constructed in accordance with the technical standards developed by the National Resource Conservation Service, American Society of Agricultural and Biological Engineers, American Society of Civil Engineers, or American Society of Testing Materials that are in effect at the time of construction. Where site-specific variations are warranted, a licensed Texas Professional Engineer must document these variations and their appropriateness to the design.

Part III.A.6(c)(2) of the GP requires that stormwater runoff must be diverted from contact with feedlots and holding pens, and manure or process wastewater storage systems. In cases where it is not feasible to divert stormwater runoff from the production area, the retention structures shall include adequate storage capacity for the additional stormwater runoff. Stormwater runoff includes rain falling on the roofs of facilities where the animals are contained within the production area, runoff from adjacent land, or other sources.

Part III.A.6(c)(3) of the CAFO GP requires that the drainage area be designed and maintained to minimize ponding or puddling of water outside the RCS.

Seepage of contaminants into groundwater is minimized in the pen area by maintaining slopes and surface compaction, which limits infiltration into the soil and groundwater and directs wastewater runoff into an RCS. Seepage is minimized in the RCSs through the use of liners.

Part III.A.6(g) of the CAFO GP includes the liner requirements for the RCSs.

Part III.A.6(g)(3)(ii) of the CAFO requires that the RCS liners must be designed and constructed with hydraulic conductivities no greater than  $1 \times 10^{-7}$  centimeters per second (cm/sec), a thickness of 18 inches or its equivalency in other materials, and not exceed a specific discharge through the liner of  $1.1 \times 10^{-6}$  cm/sec with a water level at spillway depth. This requirement is designed to protect groundwater by preventing seepage from the RCSs.

No changes were made to the CAFO GP as a result of this comment.

#### **Comment #14**

Jorge Gonzalez, on behalf of the DCGCD, commented that the CAFO GP should be amended to require groundwater monitoring reports to be submitted to the GCD in the location of the CAFO within 10 days of receipt. He commented further that the GP should require annual testing for e-coli, cryptosporidium, giardia, and other microbial levels of the groundwater, in addition to the inorganic contaminants.

Mr. Gonzalez commented that Part IV.B of the CAFO GP be amended to require CAFOs to deliver all periodic reports affecting groundwater to any GCD with jurisdiction over the facility.

#### **Response #14**

The CAFO rule in 30 TAC § 321.36(g)(10) that relate to annual reports, requires that CAFOs submit the groundwater monitoring reports, if applicable to the TCEQ with the annual reports that are due to the TCEQ on March 31 of each year for the reporting



period of January 1 to December 31 of the previous year. A copy of the reports is also available in the onsite Pollution Prevention Plan.

The commenter may request a copy of the annual report (which will include the ground water monitoring, if applicable to the CAFO) from the TCEQ Region 16 in Laredo, Texas.

Contact:

Physical Address: 707 E Calton Rd, Ste 304, Laredo, TX 78041-3887

Telephone: 956-791-6611

He may also request to view files in person by sending an email to the TCEQ Central File Room in Austin at: [cfrreq@tceq.texas.gov](mailto:cfrreq@tceq.texas.gov), or submit an open record request by sending an email to [openrecs@tceq.texas.gov](mailto:openrecs@tceq.texas.gov).

The groundwater requirements in Part III.A.16.(b)(2) of the GP that relate to the groundwater monitoring plan procedures are consistent with the CAFO rules in 30 TAC § 321.34(f)(3):

(3) a recharge feature certification, signed and sealed by a licensed Texas professional engineer, or a licensed Texas professional geoscientist, documenting the absence or presence of any natural or artificial recharge features identified on any tracts of land owned, operated, controlled, rented, or leased by the applicant and to be used as a part of a CAFO or land management unit. The recharge feature certification shall be developed in accordance with this subsection and the executive director's guidance, RG-433 Guidelines for Identifying and Protecting Aquifer Recharge Features. Use of the forms provided in RG-433 is optional.

(A) A water quality management plan certified by the Texas State Soil and Water Conservation Board for a dry litter poultry facility that evaluates site-specific recharge characteristics and management practices of the operation will meet the recharge feature certification requirement of this paragraph.

(B) If the recharge feature certification identifies the presence of recharge features the applicant shall have protective measures developed, signed, and sealed by a licensed Texas professional engineer, or licensed Texas professional geoscientist, as appropriate and in conformance with the Texas Engineering Practice Act and the Texas Geoscience Practice Act and the licensing and registration boards under these acts. The permittee must implement the protective measures. The protective measures must prevent impacts to the aquifer from any recharge features present. The protective measures must include at least one of the following:

(i) measures to protect each located recharge feature, such as impervious cover, berms, buffer zones, or other equivalent protective measures;

(ii) a detailed groundwater monitoring plan which requires annual groundwater sampling from representative wells and the groundwater analyzed for chlorides, nitrates, and total dissolved solids; or

(iii) provisions for any other similar method or approach demonstrated by the applicant to be protective of any associated recharge feature and approved by the commission.

In addition, there are requirements in 30 TAC § 321.47(k) for Animal Feeding Operations (AFOs) Not Defined or Designated as Concentrated Animal Feeding Operations (CAFOs):

(k) Groundwater monitoring. In the event that groundwater monitoring is required by § 321.41 of this title or required by the executive director, the operator shall annually collect a groundwater sample from each well that provides water for the facility. Each sample shall be analyzed for nitrate as nitrogen and chloride where groundwater monitoring is required by § 321.41 of this title and analyzed for nitrate as nitrogen, chloride, and total dissolved solids where groundwater monitoring is required by the executive director. The operator shall use the methods outlined in the groundwater monitoring plan, and compare the analytical results to the baseline data. Data from any required monitoring wells must be submitted to the executive director and kept on site for five years. The first year's sampling shall be considered the baseline data and must be retained on site for the life of the facility, unless otherwise provided by the executive director. If a 10% deviation in concentration of any of the sampled constituents is found, the operator must notify the executive director within 30 days of receiving the analytical results.

No changes were made to the CAFO GP as a result of this comment.