# COMMISSIONER’S RESPONSE TO PUBLIC COMMENT

The Texas Commission on Environmental Quality (commission or TCEQ) adopts 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 Title 30 Texas Administrative Code (30 TAC) Section (§)205.3(c), before a general permit is issued, the Executive Director (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 This response addresses all timely received public comments, whether or not withdrawn.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 Brad Tomlinson, Andy Riffe, submitted on his behalf by Erich Birch with Birch, Becker & Moorman, LLP, and Ben Weinheimer, 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).

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 [www.tceq.texas.gov](http://www.tceq.texas.gov).

Background

This is a renewal with amendment of a Texas Pollutant Discharge Elimination System / State General Permit authorizing Concentrated Animal Feeding Operations in the state of Texas. The draft permit will replace the current permit that will expire on July 20, 2019.

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.

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.

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 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.

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.

Procedural Background

TCEQ published notice of the draft CAFO GP to solicit public comment in the *Amarillo Globe-News, Dallas Morning News, Lubbock Avalanche Journal* and the *Texas Register* on February 22, 2019, and in the *Stephenville Empire Tribune* and *Sulphur Springs News - Telegram* on February 23, 2019*.* TCEQ conducted a public meeting on March 25, 2019 to take oral and written testimonies. The public comment period ended on March 25, 2019. TCEQ also took public comment via electronic-comment.

COMMENTS and RESPONSES

**COMMENT 1**

Mr. Tomlinson commented that the TCEQ should review applications for CAFOs cumulatively or based on other dairies in the area affecting the environment and other issues, water issues affecting the neighbors (draw down of wells), road safety issues, among others. According to him, the dairy owners buy land in another name, so they can dump sludge and wastes off site which are not regulated. This allows runoff and over-application of nutrients, thereby causing water quality problems.

Additionally, Mr. Tomlinson requests that the state and the TCEQ have more power to be able to regulate off-site land application areas that are not included as a land management unit under the CAFO authorization.

**Response 1**

The concerns raised by Mr. Tomlinson are currently addressed by the CAFO GP provisions described below. Therefore, no changes to the CAFO GP were made in response to Mr. Tomlinson’s comments.

According to the CAFO GP, manure, sludge, and wastewater generated by a CAFO must be retained and used in an appropriate and beneficial manner. Discharges to water in the state may occur from a properly designed, constructed, operated and maintained CAFO only during chronic or catastrophic rainfall or catastrophic conditions.

The CAFO GP requires that permittees land apply manure, sludge and wastewater in accordance with a nutrient management plan (NMP), which must be developed by a certified nutrient management specialist based on the United States Department of Agriculture/Natural Resource Conservation Service Nutrient Management Practice Standard 590. The NMP provides the permittees with the necessary information to properly manage the amount, form, placement, and timing of nutrient application to the LMUs.

In addition, the CAFO GP allows CAFOs to transfer manure, sludge and wastewater off-site for beneficial use. CAFOs must maintain records of such exports and include the information in the annual report that is due to the TCEQ on March 31 of each year for the reporting period. The recipients of transferred manure, sludge or wastewater are responsible for ensuring that they are used beneficially and must implement management practices to prevent or reduce the pollution of water in the state.

Regarding CAFO ownership and loopholes that CAFO owners may use to circumvent the regulation by buying properties under a different name and transferring CAFO manure, sludge and wastewater to the property because it is unregulated, the CAFO GP has mechanisms to prevent these actions by CAFO owners, such as the definition of a Land Management Unit (LMU).

A CAFO LMU is defined as:

“An area of land owned, operated, controlled, rented or leased by a CAFO permittee to which manure, sludge, or wastewater from the CAFO is or may be applied. This includes land associated with a single center pivot system or a tract of land on which similar soil characteristics exist and similar management practices are being used. Land management units include historical waste, application fields. The term "land management unit" does not apply to any lands not owned, operated, controlled, rented or leased by the CAFO permittee for the purpose of off-site land application of manure, sludge, or wastewater wherein the manure, sludge or wastewater is given or sold to others for land application.”

If the land meets any of the criteria above (owned, operated, controlled, rented or leased), then the permittee will be in violation of the CAFO GP if it is not an LMU under the authorization. Such lands cannot be considered “off-site” for the purposes of land application of CAFO manure, sludge or wastewater.

TCEQ does not have the statutory authority to regulate the amount of groundwater that can be pumped from wells. Local and regional groundwater conservation districts may have restrictions on well spacing and pumping. Such restrictions, if they exist locally, are beyond the scope of the CAFO GP. But it should be noted that the CAFO GP does not authorize any invasion of personal rights nor any violation of federal, state, or local laws and regulations.

Regarding the concentration of CAFOs, the TCEQ does not have the statutory authority to regulate zoning and it is beyond the TCEQ’s power to regulate an applicant’s site selection. Land use is controlled by local municipalities.

The CAFO GP is protective of human health and the environment. However, individuals are encouraged to report any concerns about nuisance issues or suspected noncompliance with the terms of any permit or other environmental regulation by calling the TCEQ 24-hour, toll-free Environmental Complaints Hotline at 1-888-777-3186. Additionally, complaints may be filed online at [www.tceq.texas.gov/complaints](http://www.tceq.texas.gov/complaints) or contact the TCEQ Regional Office. TCEQ investigates all complaints received. If the facility is found to be out of compliance with the terms and conditions of its permit, it may be subject to a possible enforcement action. Citizen complaints may also be filed on-line at <https://www.tceq.texas.gov/assets/public/compliance/monops/complaints/complaints.html>

**Comment 2**

Mr. Tomlinson commented that an operator who operates multiple CAFOs and has violations should not be granted another CAFO operating permit without considering the violations because it will be an indication of poor site management. Mr. Tomlinson requests that TCEQ review each permit application on a one-by-one basis considering: the effect on the neighbors, the concentration of CAFOs in the area, effects on the road with the number of trucks and manure / sludge spill on the road, effect on water use, and impact of water use on neighboring wells.

**Response 2**

TCEQ acknowledges the significance of the concerns of nearby landowners regarding consideration for neighbors, trucks and manure on the road, water use, and impact of water use on neighboring wells. However, some of the concerns raised by Mr. Tomlinson are currently addressed by the CAFO GP provisions described below or are concerns that the TCEQ does not have the statutory authority to address in the permitting process. Therefore, no changes to the CAFO GP were made in response to Mr. Tomlinson’s comments.

The ED reviews applications for consistency with the rules as set forth in 30 TAC 321 subchapter B. In the wastewater permitting process, TCEQ is tasked by the Legislature with protecting the quality of water in the state. The concerns described above by Mr. Tomlinson are not factors in determining whether an Applicant has met all the statutory and regulatory criteria applicable to a wastewater permit. That said, the CAFO GP does not allow the permit holder to maintain a condition of nuisance that could interfere with a landowner’s use and enjoyment of his property.

The CAFO GP requires that CAFO facilities develop a pollution prevention plan (PPP) in accordance with good engineering practices and include control measures necessary to limit the discharge of pollutants to water in the state. The PPP is to be amended:

(1) before any change in the acreage or boundaries of LMUs;

(2) before any increase in the maximum number of animals;

(3) after any new construction or modification of control facilities;

(4) before any change which has a significant effect on the potential for the discharge of pollutants to water in the state;

(5) if the PPP is not effective in achieving the general objectives of controlling pollutants in discharges from the production area or LMUs; or

(6) within 90 days following written notification from the Executive Director that the plan does not meet one or more of the minimum requirements of this general permit.

Regarding compliance history, when CAFOs renew their CAFO GP authorization, TCEQ generates a Compliance History Report and any CAFOs that have a compliance rating of “unsatisfactory” will lose coverage under the CAFO GP and be required to apply for an individual permit coverage.

**Comment 3**

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

**Response 3**

TCEQ acknowledges the supportive comment.

**Comment 4**

Ben Weinheimer, on behalf of the CAFO Industry Groups, commented that the definition of “Wellhead Protection Structure” should be revised by deleting the words “or manure” in two instances within the definition because installation of a Wellhead Protection Structure is only necessary to help prevent direct contact of wastewater with a wellhead. Mr. Weinheimer also stated that in the case of dry manure application, the manure spreading equipment is operated in a manner to maintain the required buffer zone between the wellhead and where the manure is being land applied.

**Response 4**

For the purposes of consistency with the Pollution Prevention Plan Requirements, found in Part III.A.4(4)(c)(6) of the CAFO GP, and in response to this comment, the definition for “Wellhead Protection Structure,” found in the CAFO GP, was revised by deleting “or manure.” The revised definition reads as follows:

“A structure used to protect the wellhead from irrigation wastewater. It may include a hard-walled, possibly framed, structure with a roof or otherwise covered. Structure should be secured to the ground or wellhead to withstand the elements (e.g., wind or storms) and grazing livestock. Structure must be designed to avoid wastewater from contacting the wellhead. Structure may be constructed of plywood, corrugated or sheet metal, fiber glass, plastics, synthetics, or other materials, which are structurally capable for the intended purpose. Structure may be removable or hinged to allow servicing of well or well components.”

**Comment 5**

Ben Weinheimer, on behalf of the CAFO Industry Groups, commented that Part III.A.16. (b)(4) of the CAFO GP should be revised to clarify that only ground water monitoring plans required by the Executive Director must be developed and certified by licensed Professional Engineer or licensed Professional Geoscientist. They recommended adding “(ii)” to Part III.A.16(b)(1).

**Response 5**

In response to this comment, “(ii)” was added to the referenced section in Part III.A.16(b)(4) of the CAFO GP. The section reads as follows:

“The groundwater monitoring plan required by Part III.A.16(b)(1)(ii) shall be developed and certified by a licensed Texas Professional Engineer or licensed Texas Professional Geoscientist.”

**Comment 6**

Andy Riffe commented that the CAFO GP does not provide adequate protections to water sources, particularly ground water in Texas. Mr. Riffe commented further that CAFOs pose a threat to ground water resources in West Texas, and that the CAFO GP does not include stringent requirements to protect the water quality in the Ogallala Aquifer or include specific provisions to protect the Aquifer. He suggests the Ogallala Aquifer be designated a sole source aquifer.

Mr. Riffe commented that he believes that the CAFO GP is a one size fits all permit and that it should not be applicable to CAFOs that are around the Ogallala Aquifer. Instead, as Mr. Riffe commented, CAFOs around the Ogallala Aquifer should be required to obtain an individual permit. Mr. Riffe stated that an individual permit requires more detailed, site specific review and more detailed regulatory requirements to protect the water resources.

Mr. Riffe commented further that if an individual permit is not required, then a well-designed and TCEQ approved groundwater monitoring system should be required for any CAFO that is or will be located in the area of the Ogallala Aquifer.

**Response 6**

Some of the concerns raised by Mr. Riffe are currently addressed by the CAFO GP provisions described below or are concerns that the TCEQ simply does not have the authority to address in the permitting process. Therefore, no changes to the CAFO GP were made in response to Mr. Riffe’s comments.

Designating the Ogallala Aquifer as a Sole Source Aquifer for Drinking Water is outside the scope of the CAFO GP and the authority of TCEQ. The authority to designate aquifers as sole source resides with the U.S. Environmental Protection Agency (EPA). Please visit the following web address for details: <https://www.epa.gov/dwssa/guidance-petitioning-sole-source-aquifer-ssa-designation>.

The CAFO GP is protective of both surface and ground water resources.

Part III.A.3 of the CAFO GP includes the requirements for recharge features.

3. Recharge Feature Certification

(a) The permittee shall have a recharge feature certification developed in accordance with 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. The certification must be 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 permittee and to be used as a part of a CAFO or LMU.

(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 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.

(c) The permittee must implement the protective measures.

In addition, Part III.A.4(c) includes the well protection requirements:

(c) Well Protection Requirements

(1) The permittee must not locate or operate RCSs, holding pens, or LMUs within the following buffer zones except in accordance with paragraph (2) in this section:

(i) public water supply wells - 500 feet;

(ii) wells used exclusively for private water supply - 150 feet; or

(iii) wells used exclusively for agriculture irrigation - 100 feet.

(2) The permittee may continue the operation and use of any existing holding pens, LMUs and RCSs located within the required well buffer zones provided they are protected in accordance with the recharge feature evaluation and certification required in Part III.A.3.

(i) Wells drilled before July 20, 2004, and any replacement wells, must be protected in accordance with the recharge feature certification requirements in this general permit. The recharge feature certification serves as documentation authorizing variances to the buffer zone requirements for those wells. The recharge feature certification must be kept on site and made available to TCEQ personnel upon request. It is not necessary to submit a request for a variance to the buffer zone requirements for these wells to the TCEQ.

(ii) For wells drilled on or after July 20, 2004, requests for variances to the buffer zone requirements must be submitted to the TCEQ for review and approval. The buffer variance approval letter must be kept on site and made available to TCEQ personnel upon request.

(3) Construction of any new water well must be done in accordance with the requirements of this general permit and 16 TAC Chapter 76, relating to Water Well Drillers and Water Well Pump Installers.

(4) All abandoned and deteriorated wells shall be plugged according to 16 TAC Chapter 76.104.

(5) The permittee shall not locate new LMUs within the required well buffer zones unless additional wellhead protective measures are implemented that will prevent pollutants from entering the well and contaminating groundwater. An exception to the full well buffer zone for a private drinking water well or a water well used exclusively for agricultural irrigation may be approved by the Executive Director if a licensed Texas Professional Engineer or licensed Texas Professional Geoscientist provides accurate documentation showing that additional wellhead protective measures will be or have been implemented that will prevent pollutants from entering the well and contaminating the groundwater. Additional protective measures may include a sanitary seal, annular seal, a steel sleeve, or surface slab.

(6) Irrigation of wastewater directly over a well head will require a wellhead protection structure protective of the wellhead that will prevent contact from irrigated wastewater.

Moreover, the CAFO liner requirements in Part III.A.10(g) are in place to protect groundwater. The permit requirements are as follows:

(g) Liner Requirements

For all new construction and for all structural modifications of existing RCS(s), each RCS must demonstrate the lack of hydrologic connection or a liner is required that complies with paragraph (2), (3), or (4) below.

(1) Lack of Hydrologic Connection

(i) Documentation must show that there will be no significant leakage from the RCS(s); or that any leakage from the RCS(s) will not migrate to water in the state. The lack of hydrologic connection documentation shall be certified by a licensed Texas Professional Engineer or licensed Texas Professional Geoscientist and must include information on the hydraulic conductivity and thickness of the natural materials underlying and forming the walls of the containment structure up to the wetted perimeter.

(ii) If it is claimed that no significant leakage would result from the use of in-situ materials, documentation must be provided that leakage will not migrate to waters in the state. The permittee must, at a minimum, include maps showing groundwater flow paths, or that the leakage enters a confined environment. The permittee shall also include a written determination by an NRCS engineer, licensed Texas Professional Engineer, or licensed Texas Professional Geoscientist that a liner is not needed to prevent a significant hydrologic connection between the contained wastewater and water in the state.

(2) RCS Liner using In-situ Material

In-situ material is undisturbed, in-place, native soil material. In-situ materials must at least meet the minimum criteria for hydraulic conductivity and thickness as described in Part III.A.6(g)(3). Samples shall be collected and analyzed in accordance with Part III.A.6(g)(5). The calculated specific discharge through the in-situ material must meet the requirements of Part III.A.6(g)(3). This documentation must be certified by a licensed Texas Professional Engineer or licensed Texas Professional Geoscientist.

(3) Constructed or Installed Earthen Liner

(i) Constructed or installed liners must be designed by a licensed Texas Professional Engineer. The liner must be constructed in accordance with the design and certified as such by a licensed Texas Professional Engineer. Compaction tests and post construction sampling and analyses, conducted in accordance with Part III.A.6(g)(5), will provide support for the liner certification.

(ii) Liners shall be designed and constructed to have hydraulic conductivities no greater than 1 × 10-7 centimeters per second (cm/sec), with a thickness of 18 inches or greater or its equivalency in other materials, and not to exceed a specific discharge through the liner of 1.1 × 10-6 cm/sec calculated using Darcy's Law with a water level at spillway depth.

(iii) Constructed or installed liners must be designed and constructed to meet the soil requirements, lift requirements, and compaction testing requirements as listed in Part III.A.6(f)(1), (2), and (4).

(4) Geosynthetic Liners

Geosynthetic liners that meet the specific discharge standard in Part III.A.6(g)(3) are acceptable if certified by a licensed Texas Professional Engineer. Documentation must be presented to the Executive Director for review and approval before putting into service. Installation of the liner shall be certified by a licensed Texas Professional Engineer that the liner and subgrade were completed according to the manufacturer's recommendations and current standards. Seams shall be completed in accordance with the manufacturer's requirement. When wedge weld seams are used, non-destructive seam testing shall be conducted on the complete length of the wedge weld by standard air pressure testing. The certification must document compliance with all of the following standards: ASTM D 5888 Storage and Handling of Geosynthetic Clay liners, ASTM D 5889 Quality Control of Geosynthetic Clay Liners, and ASTM D 6102 Guide for Installation of Geosynthetic Clay Liners.

(5) Liner Sampling and Analyses of In-Situ Material or Earthen Liners

(i) The licensed Texas Professional Engineer or licensed Texas Professional Geoscientist shall use best professional practices to ensure that corings or other liner samples will be appropriately plugged with material that also meets liner requirements of this subsection.

(ii) Samples shall be collected in accordance with ASTM D 1587 or other method approved by the Executive Director. For each RCS, a minimum of two core samples shall be collected from the bottom of the RCS and a minimum of one core sample shall be collected from each sidewall. Additional samples may be necessary based on the best professional judgment of the licensed Professional Engineer. Distribution of the samples shall be representative of liner characteristics, and proportional to the surface area of the sidewalls and floor. Documentation shall be provided identifying the sample locations with respect to the RCS liner.

(iii) For earthen liners, undisturbed samples shall be analyzed for hydraulic conductivity in accordance with ASTM D 5084, whole pond seepage analysis as described in ASABE Paper Number 034130, Double Ring Infiltrometer (stand pipe), or other method approved by the Executive Director.

(6) Leak Detection System

If notified by the Executive Director that significant potential exists for the adverse impact of water in the state or drinking water from leakage of the RCS, the permittee shall install a leak detection system or monitoring well(s) in accordance with that notice. Documentation of compliance with the notification must be kept with the PPP, as well as copies of all sampling data.

Part III.A.12(c) of the CAFO GP includes the general requirements for land application, and are as follows:

(c) Land Application Requirements. All permittees must manage LMUs according to the following requirements.

(1) Discharge of manure, sludge, or wastewater is prohibited from a LMU and shall not cause or contribute to a violation of surface water quality standards, contaminate groundwater, or create a nuisance condition.

(2) Land application shall not occur when the ground is frozen or saturated or during rainfall events unless in accordance with Part III.A.10(b) of this permit.

(3) Any land application of manure, sludge, or wastewater shall not exceed the planned crop requirements. Land application rates of manure, sludge or wastewaters shall be based on the total nutrient concentration, on a dry weight basis, where applicable.

(4) The land application of manure, sludge, and wastewater at agronomic rates and hydrologic needs shall not be considered surface disposal and is not prohibited.

(5) Where manure, sludge, or wastewater is applied in accordance with a site-specific NMP that complies with Part III.A.12(a), precipitation-related runoff from LMUs is authorized as a pollutant discharge if the source is land associated with a CAFO in a major sole-source impairment zone; or an agricultural stormwater discharge for all other sources as defined in 33 U.S.C. §1362 (14).

(6) Irrigation practices shall be managed so as to minimize ponding or puddling of wastewater on the site, prevent tailwater discharges to waters in the state, and prevent the occurrence of nuisance conditions.

(7) A permittee introducing wastewater or chemicals to water well heads for the purpose of irrigation shall install backflow prevention devices in accordance with requirements contained in 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers) and 30 TAC Chapter 290 (relating to Public Drinking Water), as appropriate.

(8) Land application at night shall only be allowed if there is no occupied residence(s) within 0.25 mile from the outer boundary of the actual area receiving manure, sludge, or wastewater application. In areas with an occupied residence within 0.25 mile from the outer boundary of the actual area receiving manure, sludge, or wastewater application, application shall only be allowed from one hour after sunrise until one hour before sunset, unless the current resident owner or lessee of such residences have, agreed in writing to specified nighttime applications.

Regarding individual permits, facilities that meet the requirements of the CAFO GP can obtain coverage under it. However, if any facility meets the limitations on coverage in Part II.B of the CAFO GP, then obtaining permit coverage under an individual permit will be required. The requirements in the CAFO GP are consistent with the CAFO Rules at 30 TAC Chapter 321, subchapter B and 40 Code of Federal Regulation Part122.23.

Authorizations under the CAFO GP are reviewed in detail, similar to individual permits.

All CAFO GP applications are thoroughly reviewed to ensure protection of groundwater by requiring adequate buffers from wells and recharge features. Wastewater and manure holding facilities and application areas are reviewed to ensure that adequate buffers are maintained from surface waters. The Nutrient Management Plan reviews ensure that nutrients are not applied at a rate higher than can be utilized by crops. The engineering review verifies that the RCSs are designed with adequate capacity to store process generated wastewater and manure, to hold rainfall runoff from the design storm events, and provide for odor control.

As correctly noted by Mr. Riffe, the ED has the authority to require facilities to obtain authorization under an individual permit. However, historical compliance problems, significant site-specific environmental problems, impaired watersheds with an approved TMDL, and complex operations that require permit conditions to be consolidated into one comprehensive permit for the discharge to meet water quality standards, are the applicable criteria for requiring individual permits. Absent the criteria described above, the ED cannot force a facility to obtain authorization under an individual permit.

**Comment 7**

Andy Riffe raised concerns about nuisance odors, the proliferation of CAFOs in the Panhandle region, and the cumulative effect of the odors from the existing CAFOs and new CAFOs that will be authorized in the area. Mr. Riffe requested significantly greater set-back distances between CAFOs and neighbors.

**Response 7**

The concerns raised by Mr. Riffe that are within the authority of the TCEQ to address in the permitting process are already addressed by the CAFO GP provisions described below. Therefore, no changes to the CAFO GP were made in response to Mr. Riffe’s comments.

The CAFO GP requires that potential pollutant sources be identified, and that PPP be developed and implemented for proper operation and maintenance of the facility so as not to create nuisance conditions. The CAFO GP also requires that CAFOs operate in such a manner as to prevent the creation of a nuisance, and defines “nuisance” as:

“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.”

Regarding odor, Part II.C.10 of the CAFO GP includes requirements for CAFOs.

Air quality authorization under the Texas Clean Air Act, Texas Health and Safety Code §382.051, is required for all CAFOs, regardless of their size. Depending on its specific characteristics, a CAFO may obtain air quality authorization in one of three ways:

(a) by meeting the requirements of a permit-by-rule under 30 TAC Chapter 106, Subchapter F (relating to Animal Confinement);

(b) by obtaining an individual permit under 30 TAC Chapter 116 (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(c) by meeting the requirements of the air standard permit outlined in 30 TAC Chapter 321.43 (relating to Air Standard Permit Authorization for Concentrated Animal Feeding Operations).

The CAFO GP requires CAFOs to operate according to the requirements of the Air Standard Permit for Animal Feeding Operations (See 30 Texas Administrative Code (TAC) §321.43). CAFOs are required to maintain the following buffer distances:

1. Dry litter poultry facilities

If applying litter to land associated with the poultry houses (on-farm application), the following considerations are to be taken into account:

1. Do not apply litter within 100 feet of public roads.
2. Do not apply litter within 500 feet of any residence, school, park, place of worship or other facility used by the public.
3. Application of litter during morning hours is preferable. Do not apply litter after 5:00 pm.
4. Do not apply litter on weekends or federal holidays that occur Monday-Friday if any residence, school, park, place of worship or other facility used by the public is located within 1,500 feet of the nearest edge of the application area.
5. Do not apply litter while the wind direction is from any point of application toward a residence, school, park, place of worship or other facility used by the public within 1,500 feet of the nearest edge of the application area.
6. Do not apply litter during any rainfall event or if rain is imminent.
7. Cover all loads of litter if being transported on public roads.
8. Only apply litter at the agronomic rate specified by the Water Quality Management Plan.

2. Liquid manure handling poultry facilities

For facilities that use a liquid manure handling system, they are required to be permitted by TCEQ under either the CAFO general or individual permit.

3. All CAFO facilities are required to maintain the following buffer distances:

|  |  |  |
| --- | --- | --- |
| **Feature** | **Distance\*** | **Notes** |
| Sinkhole | 100 feet | Or 35 feet with a vegetative buffer |
| Public Drinking Water Supply Well | 500 feet |  |
| Private Drinking Water Supply Well | 150 feet |  |
| Agriculture Irrigation Well | 100 feet |  |
| Water in the State | 100 feet | vegetative |
| Residence, Business, School, Church, Public Park (pre-Aug 19, 1998 facility) | ¼ mile\*\* | Or an Odor Control Plan (OCP) |
| Residence, Business, School, Church, Public Park (post-Aug 19, 1998 facility) | ½ mile\*\* | Or ¼ mile and an OCP |

\* distance from areas of manure, litter, and wastewater application.

\*\* distance from permanent odor source for Air Authorization.

Regarding the proliferation of CAFOs in the area, the TCEQ rules do not regulate the number of CAFOs in any given location, but rather the waste generated by the animals at each facility, and the management of the waste in a beneficial way that will not create a nuisance condition or cause water quality problems. Instead of numeric water quality-based effluent limitations, the CAFO GP establishes minimum control and management practices to restrict discharges to occur only during defined chronic or catastrophic rainfall events or catastrophic conditions. Additionally, the TCEQ does not have the statutory authority to regulate zoning and land use.