

Texas Commission on Environmental Quality

Interoffice Memorandum

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

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

From: *cml* 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

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Attachments:

HB 692

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Executive Director's Office
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Commissioners

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