

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 24, 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 Proposed Rulemaking
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 is required to implement 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) to adopt rules allowing the disposal of dairy waste from dairy operations, as defined in the proposed 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 proposed rule additions would 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 Texas Government Code §551.045(b)(2).

Scope of the proposed rule:

The rulemaking would amend 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 under a permit-by-rule.

Proposed new subsections §321.48 and §321.49 would 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

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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 new subsections would include water quality-based limitations to control all pollutants that could be discharged at a level that would cause, or have the reasonable potential to cause, or contribute to an excursion above any state surface water quality standard. This would include water quality-based effluent limitations for the production area and land application area of the dairy operation.

This rulemaking would also add 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*, 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 AFO or any other TCEQ authorization.

Proposed new Subchapter Q would allow entities, including landowners, to receive dairy waste from any source along the supply chain and authorize direct land application on fields that are not regulated by the TCEQ for crop production. The proposed rule would establish requirements for land application activities and a requirement to obtain the property owner's consent for use of an application site. These activities would only be allowed under emergency conditions.

This new subchapter would allow 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*, (collectively Plant) to deliver dairy waste to landowners during emergency conditions for beneficial use. Dumping of dairy waste is prohibited by this rule.

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

A.) Scope required by federal regulations or state statutes:

Rules adopted under state statutes in the 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.

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B.) 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 proposed rule provides a definition of “emergency conditions” as defined in 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.

Effect on the:

A.) Regulated community:

After adoption of the proposed rule, a permit-by-rule will be required for dairy operations that propose 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 will be required for the wastewater that includes dairy waste, and soil testing of the land application areas that will or have received the dairy waste.

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

B.) Public:

There is the potential for air quality/odor complaints from properties adjacent to the control or retention facility, playa 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 proposed rulemaking to exclude dairy waste from the permitting and notification requirements.

Planned Stakeholder involvement:

Regular updates will be provided at the quarterly Water Quality Advisory Work Group meetings hosted by WQD. WQD also plans to send outreach emails to CAFO stakeholders regarding the rulemaking, soliciting comments and input on the suggested additional

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sections to the rules in 30 TAC Chapter 321, Subchapters B and Q, and 30 TAC Chapter 335. A public hearing will be held in Austin during the comment period for the rulemaking.

Public Involvement Plan

A Public Involvement Plan is required.

Alternative Language Requirements

There are alternative language requirements for this rulemaking. The notice for this state-wide rulemaking will be published in Spanish.

Potential controversial concerns and legislative interest:

No outstanding or anticipated controversial issues.

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

The proposed rulemaking would not affect the current policy 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?

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

Key points in the proposal rulemaking schedule:

Anticipated proposal date: February 13, 2025

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

Anticipated public hearing date: March 31, 2025

Anticipated public comment period: February 28, 2025 – March 31, 2025

Anticipated adoption date: August 2025 (estimated date)

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Attachments:

[HB 692](#)

[Chapter 335 Draft rule amendments \(30 TAC §§335.2 and 335.6\)](#)

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