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**TEXAS STATE SOIL & WATER CONSERVATION BOARD**  
*Protecting and Enhancing Natural Resources for Tomorrow*

August 24, 2007

Mr. Glenn Shankle  
Executive Director  
Texas Commission on Environmental Quality  
P.O. Box 13087  
Austin, Texas 78711-3087

Re: TSSWCB and TCEQ Letter of Agreement for the Dry Litter Poultry Operations and Animal Feeding Operations

Dear Mr. Shankle:

The TSSWCB concurs that the enclosed Letter of Agreement (LOA), now signed and effective, should be used as guidance for the TSSWCB and TCEQ on dry litter poultry operations and animal feeding operations until our Memorandum of Understanding (30 TAC 7.102 & 31 TAC 523.5) is amended to reflect the current CAFO rules and our agreement regarding the handling of odor issues. Our staff is currently in the process of developing a first draft for an amended Memorandum of Understanding, and will provide that draft to your staff soon.

If you or your staff ever have any questions relating to TSSWCB's processes or procedures for implementing the provisions of the LOA, please contact Mr. John Foster at (254) 773-2250, ext. 235. As always, thank you for your continued cooperation in our partnership to control nonpoint source pollution in Texas.

Sincerely,

Rex Isom  
Executive Director

Enclosure

cc: Mark Vickery, Deputy Executive Director, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087

**Texas State Soil and Water Conservation Board and Texas Commission on Environmental Quality Supplemental Letter of Agreement to Memorandum of Understanding found in 30 TAC § 7.102 for Dry Litter Poultry Operations and Animal Feeding Operations (AFOs)**

**Inspections on Dry Litter Poultry CAFOs**

The majority of dry litter poultry facilities have certified water quality management plans (CWQMPs) from the TSSWCB which meet the requirements of the Pollution Prevention Plan in accordance with Title 30 Texas Administrative Code (30 TAC) § 321.46(a)(5). At this time, the TSSWCB conducts about 200 annual audits of these facilities. As discussed, the TCEQ proposes that the TSSWCB assume compliance monitoring responsibilities over all dry litter poultry Concentrated Animal Feeding Operations (CAFOs) with CWQMPs. If any problems are encountered with the grower and the compliance issues are not resolved, current procedure requires the TSSWCB to refer the grower to the TCEQ for possible enforcement action once the TSSWCB removes certification of the WQMP. The TCEQ proposes to amend this procedure to allow the TSSWCB to refer growers without removing certification of the plan.

Problems requiring referral to the TCEQ for enforcement consideration include:

1. Failure to obtain coverage under a general permit if evidence of a discharge or discharges is observed;
2. An unauthorized discharge or discharges into or adjacent to surface water in the state;
3. Failure to notify TCEQ of any discharge;
4. Failure to maintain required water quality buffers;
5. Failure to completely implement nutrient management practices required by CAFO rules and the CWQMP; and
6. Failure to completely implement mortality management practices documented in the CWQMP.

**Complaint Protocol On AFOs with a CWQMP and Dry Litter Poultry CAFOs**

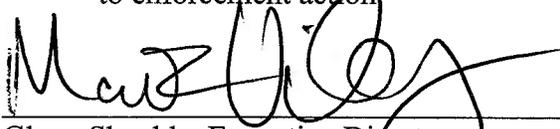
**Water Quality Complaints** on dry litter poultry CAFOs with a CWQMP and AFOs with a CWQMP:

1. The TSSWCB will be the first responder at AFOs and CAFOs with a CWQMP.
  - a. If evidence of a discharge is observed or a nuisance odor violation is documented, the operation will be referred to TCEQ for possible enforcement action in accordance with our MOU.
  - b. If no evidence of a discharge is observed or no nuisance odor violation is documented, but other CWQMP deficiencies exist, the TSSWCB will resolve the complaint or refer the operation to TCEQ for possible enforcement action in accordance with the MOU.
  - c. TCEQ may take enforcement action at an operation without referral from TSSWCB for violations of the Texas Water Code or 30 TAC, Chapter 321; Subchapter B.

2. The TCEQ will be the first responder on all other CAFOs and AFOs. In cases where the TCEQ receives a complaint, but the complainant does not identify the name of the operation, TCEQ staff will ask the complainant for the farm information/location and contact the TSSWCB regional office for a determination of CWQMP status.
  - a. If the site does not have a CWQMP, the TCEQ would handle the complaint. If any discharge or nuisance odor violation is documented by the TCEQ, the operation will be subject to enforcement action.
  - b. If the site has a CWQMP and no violations of the Texas Water Code or 30 TAC, Chapter 321, Subchapter B is documented, the TCEQ will refer the matter to the TSSWCB.

**Odor Complaints** on dry litter poultry CAFOs with a CWQMP and AFOs with a CWQMP:

1. For dry litter poultry (CAFOs/AFOs) with a CWQMP, the TSSWCB will be the first responder. If a nuisance odor condition exists, the TSSWCB will resolve the complaint or refer the operation to TCEQ for possible enforcement action in accordance with the MOU. If evidence of a discharge or discharges is observed, when responding to a poultry odor complaint, the operation will be referred to TCEQ for possible enforcement action in accordance with the MOU. However, TCEQ may take enforcement action at an operation without referral from TSSWCB for violations of the Texas Water Code or 30 TAC, Chapter 321, Subchapter B.
2. For all other CAFOs and AFOs, the TCEQ will be the first responder. If a discharge or nuisance odor violation is documented, the operation will be subject to enforcement action.

  
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Glenn Shankle, Executive Director  
Texas Commission on Environmental Quality

8-2-07  
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Date

  
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Rex Isom, Executive Director  
Texas State Soil & Water Conservation Board

8/8/07  
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Date