

Texas Administrative Code

TITLE 31 NATURAL RESOURCES AND CONSERVATION
PART 17 TEXAS STATE SOIL AND WATER CONSERVATION BOARD
CHAPTER AGRICULTURAL AND SILVICULTURAL WATER QUALITY
523 MANAGEMENT

RULE §523.3 Water Quality Management Plan Certification Program

- (a) Purpose. The purpose of this program is to carry out the mandate in Agriculture Code §201.026(g) relating to the abatement of agricultural and silvicultural nonpoint source pollution through a water quality management plan certification program.
- (b) Definitions. For the purposes of this section the following definitions shall apply.
- (1) Animal feeding operation--A lot or facility (other than an aquatic animal production facility) where animals have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12-month period, and the animal confinement areas do not sustain crops, vegetation, forage growth, or postharvest residues in the normal growing season.
 - (2) Coastal Zone Act Reauthorization Amendments--The 1990 amendments to the federal Coastal Zone Act that created the Coastal Nonpoint Program under §6217, "Protecting Coastal Waters." Under §6217, all states with approved coastal zone management programs must develop a Coastal Nonpoint Program to control polluted runoff to coastal waters.
 - (3) Dry-litter poultry facility--A poultry animal feeding operation that does not use a liquid waste handling system.
 - (4) Clean Water Act--Federal Water Pollution Control Act, 33 USC, §§1251 - 1387 (1977, as amended).
 - (5) Field Office Technical Guide (FOTG)--The official Natural Resources Conservation Service guidelines, criteria, and standards for planning and applying conservation practices.
 - (6) Natural Resources Conservation Service (NRCS)--An agency of the United States Department of Agriculture which includes the agency formerly known as the Soil Conservation Service (SCS).
 - (7) Operating unit--Land or lands, whether contiguous or non-contiguous, owned and/or operated in a manner that contributes or has the potential to contribute agricultural or silvicultural nonpoint source pollution to water in the state. An operating unit must be determined through mutual agreement by the holder of the water quality management plan, the soil and water conservation district, and the State Board. When determining the applicability of an operating unit, the following criteria must be considered:
 - (A) Contiguous lands under the same ownership and/or operational control must be considered one operating unit.
 - (B) Non-contiguous lands under the same ownership and/or operational control may be considered as more than one operating unit when there is mutual agreement by the soil and water conservation district and the potential holder of the water quality management plan unless the lands are associated with an animal feeding operation.

(C) An operating unit, when designated for an animal feeding operation, must at a minimum encompass all land or lands owned and/or operated by the holder of the water quality management plan that are used to produce feed that is consumed by the animals, as well as all land or lands owned and/or operated by the potential holder of the water quality management plan where manures or other agricultural by-products are beneficially used as a source of nutrients to produce food or fiber for any use.

(D) Land or lands within the scope of an existing operating unit for a certified water quality management plan may not be separated from the existing operating unit to establish another operating unit unless a change of ownership has occurred.

(E) Where mutual agreement regarding an operating unit's consistency with these rules is not achieved by the potential holder of the water quality management plan, the soil and water conservation district, and the State Board, the State Board will make a final determination whether or not to certify the water quality management plan.

(8) Practice standard--A technical specification for a conservation practice within the NRCS FOTG that contains information on why and where the practice should be applied, and sets forth the minimum quality criteria that must be met during the application of that practice in order for it to achieve its intended purpose(s).

(9) Resource management system--a combination of conservation practices and resource management activities for the treatment of all identified resource concerns for soil, water, air, plants, animals, and humans that meets or exceeds the quality criteria in the NRCS FOTG for resource sustainability.

(10) Soil and water conservation district (SWCD)--A governmental subdivision of this state and a public body corporate and politic, organized pursuant to Chapter 201 of the Agriculture Code.

(11) State Board--The Texas State Soil and Water Conservation Board organized pursuant to Chapter 201 of the Agriculture Code.

(12) Status review--An audit performed by the State Board on a water quality management plan for the purpose of determining adherence to the plan's implementation schedule.

(13) Texas Nonpoint Source Management Program--The comprehensive management strategy to protect and restore water impacted by nonpoint sources of pollution jointly developed and administered by the Texas Commission on Environmental Quality and the State Board and approved by the Governor of the State of Texas and the United States Environmental Protection Agency.

(14) Texas surface water quality standards--The designation of water bodies for desirable uses and the narrative and numerical criteria deemed necessary to protect those uses established by the Texas Commission on Environmental Quality.

(15) Water in the state--Groundwater, 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 nonnavigable, 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.

(16) Water quality management plan--a site specific plan for agricultural or silvicultural lands which includes appropriate land treatment practices, production practices, management measures, technologies or combinations thereof which when implemented will achieve a level of pollution prevention or abatement determined by the State Board in consultation with the local SWCD and

Texas Commission on Environmental Quality to be consistent with Texas surface water quality standards.

(c) To be certified, a water quality management plan must at a minimum meet the resource quality criteria for water quality at the resource management system level specified within the NRCS FOTG and encompass all lands whether contiguous or non-contiguous that constitutes an operating unit for agricultural or silvicultural nonpoint source pollution abatement purposes.

(d) A water quality management plan should be modified when there is a land use change of any part of the operating unit; an addition or deletion of significant acreage to or from the operating unit covered by the water quality management plan; alteration of planned permanent practice measures including addition or deletion of such; changes identified by research and advanced technology as being needed to meet Texas surface water quality standards; or when more stringent measures become necessary to meet Texas surface water quality standards.

(e) Process for obtaining a Water Quality Management Plan.

(1) Landowners and operators may request the development of a plan or plan modification by the local SWCD. Landowners and operators, following consultation with their SWCD, will be encouraged and aided in working with the SWCD in the preparation of a plan or plan modification based on standards adopted by the State Board to prevent or abate their nonpoint source pollution.

(2) The SWCD will determine the priority of plan development or plan modification and subsequently cause the development and approval of the plan or plan modification.

(3) Landowners and operators may appeal SWCD decisions relative to practices and practice standards to the State Board in the manner prescribed by the State Board.

(4) When determined to be consistent with Texas surface water quality standards, taking into account the state of existing technology, economic feasibility and water quality needs, the State Board will certify the plan or plan modification.

(f) Practice selection.

(1) Practices eligible for water quality management planning will be selected by the State Board in consultation with the SWCD.

(2) Practices will address activities determined by the State Board in consultation with the SWCD to be in need of pollution prevention or abatement.

(3) Insofar as practicable, those practices shall be consistent with the Texas Nonpoint Source Management Program developed by the State Board and the Texas Commission on Environmental Quality pursuant to the federal Clean Water Act, §319 and Coastal Zone Act Reauthorization Amendments §6217.

(g) Practice standards.

(1) Practice standards will be based on specific local conditions.

(2) Practice standards will be based on criteria in the NRCS, FOTG; however, modification of those practice standards to ensure consistency with Texas surface water quality standards and the Texas Nonpoint Source Management Program will be made as necessary. It is the decision of the State Board that the implementation of a water quality management plan based on the NRCS FOTG, including all practices required to minimally meet the resource quality criteria for water quality at the resource management system level, represents the best available technology for meeting Texas surface water quality standards.

(3) Practice standards will be selected or developed in consultation with the local SWCD, with

assistance and advice of the NRCS, Texas AgriLife Extension Service, Texas Forest Service, Texas AgriLife Research, Texas Commission on Environmental Quality, the local underground water conservation district and others as determined to be needed by the State Board.

(h) Implementation schedule.

- (1) A water quality management plan must contain an implementation schedule.
- (2) The implementation schedule will, as far as is practicable, balance the state's need for protecting water quality with need of agricultural and silvicultural producers to have sufficient time to implement practices in an economically feasible manner.
- (3) Highest priority will be given to the implementation of the most cost effective and most needed pollution abatement practices.
- (4) The State Board in consultation with affected SWCD will conduct status reviews of plan implementation.
- (5) The State Board in consultation with the local SWCDs may withdraw certification of a water quality management plan that is not being implemented in accordance with its schedule. Prior to certification being withdrawn, a landowner will be notified and provided a reasonable period of time to implement the water quality management plan according to the schedule or a modified schedule approved by the SWCD.
- (6) The holder of a certified water quality management plan shall notify the local SWCD in the event he or she deviates from the implementation schedule.

(i) Applicability of Texas surface water quality standards. To the extent allowed by available technology, water quality management plan development, approval and certification will be based on Texas surface water quality standards as established by the Texas Commission on Environmental Quality.

(j) Water Quality Management Plans for Poultry Facilities.

- (1) All poultry facilities producing poultry for commercial purposes are required to develop and implement a certified water quality management plan covering the poultry operating unit. Poultry facilities must request development and certification or recertification of a water quality management plan prior to placing poultry at a new facility or placing additional poultry at an existing facility.
- (2) Poultry facilities may obtain a water quality management plan as prescribed in subsections (e) - (h), unless a facility is unable to attain certification based on conditions prescribed in paragraph (3) of this subsection.
- (3) After September 1, 2009 the State Board may not certify a water quality management plan for a proposed newly constructed poultry facility, or an existing poultry facility that proposes to expand by more than 50 percent the number of birds included in the existing certified water quality management plan as of September 1, 2009, that is located less than one half of one mile from a neighbor if the presence of the facility is likely to create a persistent nuisance odor for such neighbors, unless the facility provides an odor control plan the Texas Commission on Environmental Quality determines is sufficient to control odors. A facility that will house fewer than 10,000 total birds is unlikely to create a persistent nuisance odor. Within this paragraph and subparagraphs, the term neighbor includes business, off-site permanently inhabited residence, place of worship, or other poultry farm under separate ownership; and proposed facility has the meaning described above in this paragraph.

(A) Factors that are considered likely to create a persistent nuisance odor and will require the proposed facility to submit an odor control plan are:

- (i) Any neighbor within one quarter of one mile of a proposed facility or;
- (ii) Any neighbor between one quarter and one half of one mile in the prevailing wind direction of a proposed facility, considering both cool and warm seasons or;
- (iii) Any school, place of worship, healthcare facility, or other poultry facility within one half of one mile of a proposed facility or;
- (iv) Proposed facility will house more than 225,000 birds per flock or;
- (v) Proposed facility will use a liquid waste handling system or;
- (vi) A notice of violation for odor has been issued to the proposed facility within the previous 12 months.

(B) If none of the factors in subparagraph (A) apply to the proposed facility, the following table will be used to assess the site to determine if the proposed facility is likely to create a persistent nuisance odor for neighbors. If the total score from the assessment of each of the factors exceeds 50 points, the presence of the proposed facility is likely to cause a persistent nuisance odor for neighbors, and the proposed facility must provide an odor control plan the Texas Commission on Environmental Quality determines is sufficient to control odors.

SITE ASSESSMENT TOOL				
	POTENTIAL FOR PERSISTENT ODOR NUISANCE			
FACTOR	LOW	MEDIUM	HIGH	SCORE
Birds Per Flock	<100,000 = 1 pt	100K-165K = 20 pts	>165K = 30 pts	
Maximum Length of Flocks	<42 days = 1 pt	42-49 days = 10 pts	>49 days = 30 pts	
Litter Application Planned On-Farm	No = 0 pts	N/A	Yes = 30 pts	
Number of Neighbors	1 = 3 pts	2 = 5 pts	>2 = 10 pts	
Topography Influence*	None = 0 pts	Medium = 5 pts	High = 10 pts	
Number of Incinerators	None = 0 pts	1 = 5 pts	>1 = 10 pts	
Vegetation (as odor buffer)*	Heavy = 1 pt	Medium = 3 pts	None = 5 pts	
Property Line Distance	>300' = 0 pts	150-300' = 3 pts	<150' = 5 pts	
<p>*Vegetation (as buffer between proposed facility and any neighbor to filter dust and dilute odors)</p> <p style="margin-left: 40px;">None: no significant vegetation capable of dispersing or deflecting odors</p> <p style="margin-left: 40px;">Medium: scattered or intermittent brushy herbaceous vegetation and trees with under-, mid-, and overstories.</p> <p style="margin-left: 40px;">Heavy: continuous 3-tiered forested woody vegetation</p>				
<p>*Topography Influence</p> <p style="margin-left: 40px;">None: topography is level, upslope from proposed facility, or hill/ridge separates proposed facility and any neighbors.</p> <p style="margin-left: 40px;">Medium: topography is downslope from proposed facility toward any neighbor, but no valley.</p> <p style="margin-left: 40px;">High: topography forms downslope valley from proposed facility toward any neighbor.</p>				

(C) Any facility whose water quality management plan was previously certified by meeting the conditions of subparagraphs (A) or (B) or an approved odor control plan and proposes to expand the number of poultry at the facility, regardless of the percent of the expansion, must again submit to the process in subparagraphs (A) or (B) before the water quality management plan can be recertified.

(D) Alternatively to meeting conditions of subparagraphs (A), (B), or (C) a proposed facility may obtain certification of a water quality management plan if subsections (e) – (h) are met and each neighbor within one half of one mile of the proposed facility provides a notarized letter of consent signed by the neighbor or authorized legal representative(s) of the neighbor. The letter must contain the name, physical and mailing addresses, and phone number of the neighbor and consent to location and operation of permanent odor sources of a poultry facility within one half of one mile of the neighbor. Such letter(s) must be contained in the water quality management plan.

(4) The State Board will maintain a listing of poultry facilities that have requested a certified water quality management plan. The list will indicate date of plan approval by the SWCD and date of certification by the State Board. The listing will also indicate status of implementation.

(5) The State Board in consultation with the local SWCD will conduct status reviews of certified water quality management plans covering poultry facilities on a schedule determined by the State Board.

(6) The State Board, in consultation with the local SWCD may withdraw certification of a water quality management plan that is not being implemented according to its schedule. Prior to certification being withdrawn, the owner/operator of the facilities will be notified and provided a reasonable period of time, as determined by the State Board, to implement the water quality management plan, which may, at the discretion of the local SWCD in accordance with State Board guidance be modified to allow implementation to occur.

(7) The list developed and maintained under paragraph (4) of this subsection will be made available to the Texas Commission on Environmental Quality.

(8) Landowners and operators after consultation with the SWCD may appeal SWCD decisions to the State Board.

Source Note: *The provisions of this §523.3 adopted to be effective December 22, 1993, 18 TexReg 9106; amended to be effective June 22, 1995, 20 TexReg 4270; amended to be effective June 20, 2000, 25 TexReg 5913; amended to be effective January 7, 2002, 27 TexReg 270; amended to be effective March 21, 2004, 29 TexReg 2652; amended to be effective June 21, 2006, 31 TexReg 4867; amended to be effective December 23, 2008, 33 TexReg 10325; amended to be effective January 6, 2010, 35 TexReg 106.*