

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** August 22, 2014

Thru: Bridget C. Bohac, Chief Clerk
Richard A. Hyde, P.E., Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2014-0101-RUL

Subject: Commission Approval for Rulemaking Adoption
Chapter 312, Sludge Use, Disposal, and Transportation
Amendments to Chapter 312: Sludge Use, Disposal, and Transportation
Rule Project No. 2014-010-312-OW

Background and reason(s) for the rulemaking:

On May 13, 2013, the Texas Commission on Environmental Quality received a petition from Mr. Cole Turner (petitioner), on behalf of the landowners and citizens of Ellis County (Project Number 2013-033-PET-NR).

The petitioner requested that TCEQ amend 30 Texas Administrative Code (TAC) Chapter 312 in order to prohibit the land application of sewage sludge in, or within, three miles of a city limit in a county with a population of 140,000 or more that is located adjacent to a county with a population between 2,000,000 and 4,000,000.

On June 18, 2013, the commissioners instructed the executive director to examine the issues raised in the petition and to initiate the rulemaking process by obtaining stakeholder input on the issues raised in the petition and other odor related concerns at bulk sewage sludge land application sites.

At the November 20, 2013 Commissioners Agenda, the executive director reported findings from the stakeholder process and recommended initiating a state-wide rulemaking to address nuisance odors and other conditions rather than the three mile prohibition requested in the petition. This recommendation to move forward with the rulemaking process was based upon stakeholder comments requesting relief from odors, vectors, unauthorized discharges from land application sites, tracking of material on roadways; and staff observations during site visits. The commissioners instructed the executive director to proceed with releasing draft rule concepts and draft rule language to stakeholders for discussion prior to rule proposal.

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Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The adopted rulemaking will address nuisance odors and unauthorized discharges of bulk sewage sludge by establishing new "core requirements" applicable to all classes of sewage sludge, establishing a new classification structure with corresponding requirements based upon treatment processes, and clarifying the executive director's authority to include additional requirements as needed to address nuisance odors and unauthorized discharges.

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

None.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Not Applicable.

Statutory authority:

- Texas Water Code (TWC), §5.013, establishes the general jurisdiction of the TCEQ;
- TWC, §5.102, provides the TCEQ with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103;
- TWC, §5.103, requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state;
- TWC, §5.105, authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC;
- TWC, §5.120, requires the TCEQ to administer the law for the maximum conservation and protection of the environment and natural resources of the state;
- TWC, §26.011, provides the TCEQ with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state;
- TWC, §26.034 gives the TCEQ the authority to set standards to prevent the discharge of waste that is injurious to the public health;
- TWC, §26.027 authorizing the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; and
- Texas Health and Safety Code, §361.121, which gives the TCEQ the authority to require a permit before a responsible person may apply Class B sludge on a land application unit.

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Effect on the:

A.) Regulated community:

Existing sewage sludge processing facilities that generate sewage sludge subject to the new classification proposed in the rule would be subject to the new provisions adopted via rulemaking. All existing bulk sewage sludge land applicators will be subject to new "core requirements".

B.) Public:

Stakeholders that reside near beneficial sewage sludge land application sites would benefit from new requirements adopted to address nuisance odors and unauthorized discharges.

C.) Agency programs:

The adopted rulemaking will assist the Water Quality Division to better locate and track Class A and new Class AB sewage sludge land application sites. The Office of Compliance and Enforcement will have better tools to locate and enforce against land application sites in regards to odor and off-site tracking of the sewage sludge material.

Stakeholder meetings:

The executive director held four stakeholder meetings in Springtown, Midlothian, Brookshire and Austin, Texas while evaluating the rule petition. On January 7, 2014, the executive director held a final stakeholder meeting in Austin, Texas to discuss concept rule language.

Based on stakeholder recommendations, minor changes to draft rule language were made for clarification purposes. Stakeholder recommendations to increase buffer zone distances, require incorporation of sewage sludge, and overhaul nuisance odor compliance methodology were taken into consideration but were not revised. Increases in buffer distances would unnecessarily impact existing Class B operations. Mandatory incorporation of sludge would impact landowner recipients producing hay, which are the majority of end users. Nuisance odors are evaluated by the agency under separate regulations at 30 TAC §101.4, Nuisance.

Public comment:

The commission held a public hearing on May 6, 2014, in Austin and the comment period closed on May 12, 2014. The commission received comments from environmental consulting firms, municipalities, an Ellis County Commissioner, two concerned citizens, sewage sludge land application operators, the Texas Compost Council, and the Water Environment Association of Texas (WEAT) and the Texas Association of Clean Water Agencies (TACWA).

Comments on the proposed rules consist of the following:

- allow temporary storage of sewage sludge for an additional 90 days

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- add variance process for Class AB to be categorized as Class A with sufficient demonstration
- include “objectionable” or other qualifier to clarify what odors are required to be minimized at a land application site
- require incorporation of sewage sludge into the soil at land application sites
- remove the proposed requirement for an Adverse Weather and Alternative Plan for composted or heat-dried sludge used on home lawns, highway rights-of-ways, sports fields, etc.
- add definitions for “nuisance odor” and “best management practices”
- rename "sewage sludge" to "biosolids" and change the name of Class AB to Class AA
- allow an exception to sign posting time-frame requirements due to circumstances such as adverse weather and equipment malfunction

Significant changes from proposal:

Based on comments provided by a sludge operator and WEAT and TACWA, which request use of the word "objectionable" when describing odors, the commission is instead adding the word "offensive" to §312.44(j)(3)(B) when describing odor conditions that would need to be minimized. The commission agrees that clarification is needed and is therefore applying the term "offensive" to be consistent with the commission’s current odor assessment methodology under 30 TAC §101.4.

Based on concerns from the Texas Compost Council regarding the submittal of an Adverse Weather and Alternative Plan and its applicability to home lawns, highway rights-of-ways, sports fields, etc., the commission is proposing to amend §312.44(h)(3) to include only an operator of a TCEQ permitted or bulk sewage sludge site subject to the notification requirements in §312.4(b) who land applies sewage sludge on agricultural land shall submit an Adverse Weather and Alternative Plan. This change would exclude private lawns, highway rights-of-ways, sports fields from this requirement.

Based on comments received from TCEQ Field Operations, the commission has revised §312.44(j)(3)(C) to clarify the use of best management practices as an appropriate control to minimize the off-site tracking of sewage sludge and to require that material tracked off-site be collected at the end of each day of operation at the site and either be returned to the site or otherwise properly disposed.

Based on comments received from the City of Fort Worth and a sludge operator that object to the amount of time (three days prior) a sign must be posted before land application, the commission has updated §312.44(l) to allow the sign to be posted on the day of sewage sludge application in the event of unforeseen circumstances such as adverse weather conditions or equipment failure. Records of any deviation of the posting requirements and associated reasons shall be retained by the operator and be readily available for review by a TCEQ representative.

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Based on comments received from TCEQ Field Operations, the commission is proposing to amend §312.4(b)(2)(D) to require submittal of a map showing the buffer zone areas as required under §312.44(c)(2)(D) and (E) for all locations proposed to receive the Class AB sewage sludge.

Based on comments received from WEAT and TACWA, which requested a variance process for Class AB to be categorized as Class A with sufficient demonstration, the commission is adding a variance process under §312.82(a)(1)(B).

Potential controversial concerns and legislative interest:

Wastewater treatment plants that have advanced sewage sludge processing facilities, that produce Class A sewage sludge for marketing and distribution that are currently not experiencing odor complaints or other issues, may be opposed to more stringent requirements. Farmers and ranchers that currently utilize sewage sludge as a soil amendment may be opposed to additional restrictions in the rules. Some citizens feel that the rule concepts don't go far enough to address their concerns.

There is legislative interest related to this issue. Members of the legislature in the Dallas-Fort Worth and north Texas area have expressed interest in this issue. Multiple local county and state legislative officials attended one or both of the stakeholder meetings held in the Dallas-Fort Worth area.

Does this rulemaking affect any current policies or require development of new policies? No.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking? This rule provides additional requirements to help minimize odor for land application of sludge. Without the rulemaking, the existing rule would remain in place and additional requirements to minimize odors would not be in place. The alternative to rulemaking would be amending authorizations issued to individual facilities to include more stringent site specific requirements on an as needed basis.

Key points in the adoption rulemaking schedule:

Texas Register proposal publication date: April 11, 2014
Anticipated *Texas Register* adoption publication date: September 26, 2014
Anticipated effective date: October 2, 2014
Six-month *Texas Register* filing deadline: October 2, 2014

Agency contacts:

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Attachments

None.

cc: Chief Clerk, 2 copies
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