The Texas Natural Resource Conservation Commission (commission or agency) adopts the repeal of §§312.4 and 312.10 - 312.12, and the amendment to §312.13. The commission concurrently adopts new §§312.4 and 312.10 - 312.12. New §§312.4 and 312.10 - 312.12 are adopted *with changes* to the proposed text as published in the April 26, 2002 issue of the *Texas Register* (27 TexReg 3513). Repealed §§312.4 and 312.10 - 312.12, and amended §312.13 are *adopted without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The purpose of this rulemaking is to implement House Bill (HB) 2912, §9.05, 77th Legislature, which added to Texas Health and Safety Code (THSC), new §361.121 to require permits for the land application of Class B sewage sludge after September 1, 2003. The commission simultaneously repeals and adopts new §§312.4 and 312.10 - 312.12. The commission also adopts the amendment to §312.13. The new sections retain as much of the previous language as feasible. The rulemaking also includes provisions relevant to Class B sewage sludge and other materials regulated by the chapter.

HB 2912, §9.05 further requires that a permit holder must report any noncompliance of the permit conditions or applicable permit rules to the commission. The legislation also stipulates that a permit applicant must submit information regarding the hydrological characteristics of the surface water and groundwater within one-quarter mile of any land application unit. Unrelated to legislative implementation, the rulemaking also updates the rules, increases clarity, corrects typographic and grammatical errors, corrects outdated citations and names, and corrects inconsistencies and errors in the rules, as discussed in the SECTION BY SECTION DISCUSSION portion of the preamble.

The key change for implementing legislation is that, beginning September 1, 2003, all sites which land apply Class B sewage sludge will be required to have a valid permit instead of a registration. The provisions for land application of Class B sewage sludge under a registration will expire on August 31, 2003. Those sites that are currently registered exclusively for land application of Class A sewage sludge, water treatment sludge, and/or domestic septage are not affected by the rulemaking.

The introduction of a new fee structure for issuing Class B sewage sludge land application permits is also adopted in this rulemaking. By statute, the fees must be from $1,000 to $5,000 based on the amount of sludge to be land applied on an annual basis.

One significant provision not related to HB 2912 allows the executive director (ED) to deny a request for authorization (submitted via a notice of intent) regarding the proposed activities related to storage, land application, and marketing and distribution of Class A sewage sludge. Another significant provision deals with soil sampling for beneficial use sites. Under the previous rules, applicants were allowed to sample at the rate of one sample per 80 acres and to change the frequency by including a sampling plan in their application. The new rules require the frequency of one sample per 80 acres or less to apply in all cases and allow the use of alternate ways of defining the areas to be sampled when described in detail in a sampling plan submitted with the application. Other changes not arising from HB 2912 include: 1) Updating certain names and citations and correcting typographic errors; 2) Requiring that administrative penalties and annual fees be paid or waived by the ED before a permit application is processed; 3) Requiring that annual fees and any associated penalties for non-payment become the liability of any person to whom a permit is transferred; 4) Allowing 50% refunds of the

application fee upon written request if a permit is not issued; 5) In cases where a permit application is filed for a site whose current registration will expire before September 1, 2003, allowing the registration to remain in effect either until that date or until the permit is issued, whichever occurs first; 6) No longer accepting registration applications for the land application of Class B sewage sludge after the effective date of the rules; 7) Requiring that only one application (permit or registration) be processed for a given site; 8) Requiring that information for public notices conform with 30 TAC §50.135 provisions; and 9) Changing the exclusion from public notice for sites using Class A sewage sludge so that only sites using Class A sewage sludge that has been approved for marketing and distribution are excluded.

SECTION BY SECTION DISCUSSION

Sections 312.4 and 312.10 - 312.12 are repealed and replaced with new §§312.4 and 312.10 - 312.12 for the purpose of legislative implementation. The new sections retain as much of the previous rule language as feasible.

In addition to the provisions mandated by HB 2912, §9.05, the rulemaking improves clarity and corrects inconsistencies, outdated citations and names, and grammatical/typographic errors throughout the sections. The rule language is made clearer and simpler where possible, both by rewording and reformatting of previous language. Throughout the language, the commission clarifies where appropriate that the generic term “sewage sludge” includes domestic septage (although since domestic septage is not Class A or Class B sewage sludge, those more specific terms do not include it) and substitutes the word “commission” for the acronym “TNRCC.” In HB 2912, Article 18, the 77th

Legislature changed the name of the agency to the Texas Commission on Environmental Quality, effective September 1, 2002, so a more generic term is used in the adopted language where practical.

*Section 312.4 - Requirements for Sewage Sludge Permit, Registration, or Notification*

New §312.4 changes the section title to "Requirements for Sewage Sludge Permit, Registration, or Notification." New §312.4(a) adds the temporary storage of waste incidental to secondary transportation to the list of types of storage that do not require a permit; such storage is required at Type V Liquid Waste Transfer Stations, which can be authorized under registrations if receiving less than 32,000 gallons per day of liquid wastes. To clarify that provisions in existing registrations allowing the use of Class B sewage sludge will no longer be effective after August 31, 2003, new §312.4(a)(1) provides that any provisions allowing the use of Class B sewage sludge in registrations will no longer be valid after that date and that such activity will require a permit. To be consistent with 30 TAC §50.135 concerning Effective Date of Executive Director Action, new subsection (a)(2) clarifies that the effective date of a permit is the date that the ED signs it. New subsection (a)(3) specifies that certain information relating to permits must be confirmed or updated under certain conditions or upon request. New subsection (a)(4) provides that if a permit is required under this chapter, all activities related to this chapter (except transportation) at that site must be incorporated into the permit.

New §312.4(b) changes and updates notifications of the use, distribution, or storage of Class A sewage sludge that meets the metal limits in §312.43(b)(3) and vector attraction reduction requirements at the point of generation. New subsection (b)(1) clarifies that the exemption for Class A sewage sludge from

registration requirements apply also to permit requirements. New subsection (b)(2) simplifies language concerning the filing of a notice of intent (for marketing and distributing, land applying, or storing Class A sewage sludge; requires that the notices be sent by certified mail, return receipt requested; and provides clearer language on the content of a notice of intent for activities related to Class A sewage sludge in subsection (b)(2)(C). Also in subsection (b)(2)(C), the proposal language is changed slightly for clarity. New subsection (b)(3) provides a mechanism for the ED to deny authorization for an activity requested in a notice of intent within 30 days after the notice is received if there is a conflict with rule requirements or permit conditions in the notice. New subsection (b)(4) removes the requirement to use certain forms for annual reports, that the reports must show in detail the activities that occurred during the year, and to clarify that the report can be combined with certain other annual reports required by the chapter if the person filing it engaged in activities covered by the other reports.

New §312.4(c)(1) provides that sites can be permitted for land application instead of being registered for this activity. New subsection (c)(2) provides that the provisions for land application of Class B sewage sludge in registrations will expire on August 31, 2003, but that provisions for applying other materials will continue. New subsection (c)(3) provides that applications to register sites for the land application of Class B sewage sludge will not be accepted after the effective date of these rule changes, that permit applications must be submitted instead, and that only one application will be processed for any site. New subsection (c)(4) provides for the removal of the provisions in previous subsection (c)(2) and changes the effective date of registrations to the date signed by the ED, in order to be consistent with changes to §50.135.

New §312.4(d) deletes outdated language. New §312.4(e) deletes language indicating that §312.4(b) allows land application of sewage sludge without a prior written authorization and substitutes "commission" for "executive director" as a more general term (since some permits may require orders from the commission in order to be issued).

New §312.4(f) provides a new schedule for base fees for permits to land apply Class B sewage sludge. New subsection (f)(1) provides that the fees are for applying for the permit; that the fees in this subsection replace those in 30 TAC §305.53; that the final decision on an application cannot be made until the fee is paid; and that the fees be paid to the commission (showing the new name for the agency that takes effect on September 1, 2002) at the time applications for new permits, amendments, renewals, modifications, and transfers are submitted. The effective date of the name change of the agency is deleted from the rule language that was proposed because the name change will be in effect by the effective date of these amendments. New subsection (f)(2) provides that applications related to permits for the land application of Class B sewage sludge cannot be processed until all delinquent annual fees and administrative penalties for the applicant and site have been paid. This requirement can be waived by the ED for good cause if the applicant was not the permittee at the time that the fees or penalties became delinquent. Entities to whom a permit is transferred become liable for any outstanding fees and associated penalties. A word substitution is made for clarity in the rule language that was proposed for subsection (f)(2). New subsection (f)(3) provides that half of a permit fee can be refunded upon written request if a permit is not issued; although such refunds are not covered in HB 2912, §9.05, the language in the legislation specifies that the fees are for issuance of a permit. New subsection (f)(4) provides the fee schedule for permit applications; the schedule covers fees between

$1,000 and $5,000 based on the amount of Class B sewage sludge to be land applied annually under the permit, as required by statute.

*Section 312.10 - Permit and Registration Application Processing*

New §312.10(b) references the parts of the rules where specific information required for permit and registration applications is found, rather than listing certain specific information that is required for both permit and registration applications. The language that was previously in §312.10(b)(1) - (6) and (c), all of which pertain to the items to be included in permit and registration applications, is moved to new §312.11 and §312.12, so that required information for applications for registrations or permits are together in those sections.

New §312.10(c) retains the language that was previously in §312.10(d) with minor corrections for other adopted changes. New subsection (d) references 30 TAC Chapter 39 rather than listing information to be included in notices of receipt of applications. New subsection (e) updates citations in language from previous subsection (f) and adds “land application” and “storage” to the list of types of permits covered by the subsection, since permits are also required for such activities under some circumstances. New subsection (f) expands applicability to all types of permit applications since the processing requirements apply to all types of permits under this chapter. New subsection (g) retains the processing criteria for registrations (previously §312.10(h)) and, when a permit application is filed, allows a registration that would otherwise expire to remain in effect until a final decision is made on the permit or until September 1, 2003, whichever occurs first. A comma is added for clarity to the rule language that was proposed for subsection (g). New subsection (h) includes the provisions from the previous subsection

(i) with clarification that cancellations are not contingent upon the ED informing the other party affected. New subsections (i) - (k) expand the applicability to permits for beneficial use in addition to registrations and change terms specific to registrations to more generic language since some sites will also be permitted in the future. A word substitution is made for clarity in the rule language that was proposed for subsection (j). New subsection (k) differentiates the criteria for major amendments to permits and registrations. Additionally, the term "permit" is deleted twice in the language concerning major amendments to registrations in subsection (k) because it is incorrect since the requirements for major amendments to permits are covered separately in the subsection.

*Section 312.11 - Permits*

New §312.11(a) makes the section applicable to all types of permits under the chapter, rather than only disposal and incineration permits. Similarly, new subsection (b) expands the processing standards to apply to all types of permits under the chapter. New subsection (c) references other chapters in this title that specify elements of permit applications and lists additional requirements for permits under this chapter in associated paragraphs. New subsection (c)(1) provides the additional criteria for maps depicting the site and surrounding properties for disposal and incineration applications, which retains the requirement to show information on landowners within one-half mile of the site and adds requirements to send information on landowners' names and addresses in multiple formats. New subsection (c)(2) provides similar criteria for these maps for other types of permits under the chapter, which only require information on adjacent landowners but duplicate the requirements for multiple formats noted previously. New subsection (c)(3) requires a notarized affidavit verifying land ownership

or landowner agreement to the proposed activity (previously §312.10(b)(4)). New subsection (c)(4) requires that all permit applications be submitted in quadruplicate form.

New §312.11(d) lists additional requirements for applications for permits to land apply Class B sewage sludge, which do not apply to other permits under the chapter. New subsection (d)(1) cites the requirements for registration applications for certain information that is also needed in applications under this subsection. New subsection (d)(2) provides the requirements for soil sampling for metals, and new subsection (d)(3) provides the requirements for soil sampling for nutrients, salinity, and pH. The new language differs substantively from the language that had applied to registrations in the following ways: 1) the minimum rate of sampling is set at one composite sample from each 80 acres or less of area being sampled; 2) alternate lower sampling frequencies are no longer allowed; and 3) an alternate method of defining areas to be sampled is allowed if a sampling plan is included in the application to show that the soils present have been adequately tested. New subsection (d)(4) adds a requirement that applicants furnish documentation regarding the hydrological characteristics of the surface and groundwater within one-quarter mile of the site, as required by the statute. New subsection (d)(5) requires four copies of applications to be submitted.

New §312.11(e) expands applicability of permit characteristics and standards to all types of permits covered by the chapter. New subsection (f) requires reporting of noncompliance with permit conditions and states that this provision must appear in all beneficial use permits, as required by statute; new subsection (f)(1) - (5) provides the minimum requirements for this reporting. New subsection (g) requires that each permit for the land application of Class B sewage sludge include the maximum

amount of sludge that can be applied under the permit, as required by statute. New subsection (h) cites the requirements that apply to amendments and renewals of permits covered by this chapter and describes the obligation for permittees to provide written notice of changes under certain conditions.

*Section 312.12 - Registration of Land Application Activities*

New §312.12(a) provides that, after August 31, 2003, all registrations for the beneficial use of Class B sewage sludge will be void. Registrations for the beneficial use of Class A sewage sludge, water treatment plant sludge, and domestic septage remain in effect until other action occurs.

New §312.12(b) retains with changes the language from the old §312.12(a), adds a reference to §312.11 (since permits will apply to some beneficial use sites after the effective date of these rule revisions), and makes changes in the associated paragraphs. New subsection (b)(1) adds a requirement that forms approved by the agency be used when applying for a registration action, specifies that the appropriate number of copies be submitted, and provides specific information requirements in the associated subparagraphs. New subsection (b)(1)(A) retains the requirement that applications provide a description of the sewage sludge and its composition. New subsection (b)(1)(B) clarifies that the provision applies to all sewage sludge to be applied to the site, including domestic septage. New subsection (b)(1)(C) provides for language that is grammatically compatible with the listed information in the associated clauses. The clauses are retained intact, except that in new subsection (b)(1)(C)(v) the exemption from resubmitting soils data that was submitted since August 19, 1993, is deleted; this change requires more current and complete data in all applications to allow for more comprehensive public review and comment, as well as requiring that the most current information be provided as soil

surveys are updated and reissued. New subsection (b)(1)(D) - (G) provides the criteria from the old §312.10(b)(1) - (6) and (c) (pertaining to the items required to be included in registration applications) so that information in this chapter for registration applications is together in one section. New subsection (b)(1)(H) requires that maps and lists related to adjacent landowners be included in multiple formats with applications for new registrations and major amendments, in order to facilitate public review of the application and the mailing of notices on the application by the commission's chief clerk. New subsection (b)(1)(I) and (J) provides criteria for soil sampling for registrations that are the same as for permits. New subsection (b)(1)(K) retains the requirement that four copies of all application information be submitted. New subsection (b)(2) retains the requirements for providing written notice of certain changes for a site or registration.

New §312.12(c) retains the provisions for review and approval of registrations (previously §312.12(b)) with minor changes for clarity. New subsection (d) provides the requirement to send notice (rather than copies) of the decision on an application to all parties who submitted written information on the application (including public comments) when the decision is mailed to the applicant (previously §312.12(c)).

*Section 312.13 - Actions and Notice*

Section 312.13 corrects typographical errors and incorrect citations, reorganizes the section for clarity, and adds new notice requirements. The amendments to subsection (a) provide clarity and add "store" and "process" to the list of types of permits and registrations affected since the same actions pertain to those types of authorizations as well. The amendment to subsection (b) groups current provisions as

subsection (b)(1) with corrections of outdated citations. The amendment to subsection (b)(2) requires that notice be provided to all landowners within one-half mile of disposal and incineration sites. The amendment to subsection (c)(1) applies the required public notice actions to all types of registrations; subsection (c)(1) limits the current exclusion for Class A sewage sludge to only Class A sewage sludge that has been approved for marketing and distribution because the commission believes that all types of registrations should be subject to public notice and input requirements (per new §312.4(b), no registration is required for sites using Class A sewage sludge that has been approved for marketing and distribution). The amendment to subsection (c)(3) corrects the name for public notices. The amendments to subsection (d) clarify that “domestic septage” is part of the term “sewage sludge,” delete unnecessary verbiage, and update a citation that is renumbered. In subsection (e), the following changes are made: 1) update the term “motion for reconsideration” to “motion to overturn”; 2) update reference to the applicable rule for such motions; and 3) clarify that the commission’s public interest counsel and any other person can file motions, rather than just persons who are affected by the authorization of a site.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A “major environmental rule” means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the

public health and safety of the state or a sector of the state. This adoption does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The rulemaking requires a responsible person to obtain a permit to apply Class B sewage sludge on a land application unit as required by THSC, §361.121. This rulemaking affects the same class of regulated entities, except the entities must obtain a permit as authorization instead of a registration. The commission shall no longer process and issue any registrations to authorize persons to land apply Class B sewage sludge. In addition, the rules require an applicant to pay a permit fee based on the amount of sludge to be applied. The rules require a sampling plan in the permit application when soil sampling is based on a method other than sampling separately each United States Department of Agriculture Natural Resource Conservation Service soil type (soils with the same characterization or texture). The new minimum sampling frequency is one sample per 80 acres or less of each soil type in the application area. The rules allow alternate sampling methods to be used when described in detail in the sampling plan submitted with the application. The rulemaking also includes minor administrative changes and corrections.

Unrelated to the legislative changes, the proposed rules also allow the executive director to deny activities under a filed Notice of Intent for marketing and distributing, storing, or land applying Class A sewage sludge. Additionally, the rulemaking clarifies that the exemption for Class A sewage sludge from registration requirements also apply to permit requirements.

The rulemaking does not meet the definition of a major environmental rule as defined in the Texas Government Code, because §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The commission concludes that a regulatory analysis is not required in this instance because the rules do not trigger any of the four criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary assessment of these rules in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to ensure that the commission's regulations comply with new Class B sewage sludge permitting requirements. The rulemaking requires a responsible person to obtain a commission permit to apply Class B sewage sludge on a land application unit as required by THSC, §361.121. The commission shall no longer process and issue any registrations to authorize persons to land apply Class B sewage sludge. The rulemaking also allows the executive director to deny certain activities with Class A sewage sludge. The rules substantially advance this stated purpose by adopting language intended to ensure that state rules are equivalent to the corresponding state law. The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007 does not apply to this rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission determined that the rulemaking does not relate to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Management Act of 1991, as amended (Texas Natural Resources Code, §§33.201 *et seq.*) and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. Therefore, the amendments to Chapter 312 are not subject to the CMP.

PUBLIC COMMENT

A public hearing on this proposal was held in Austin on May 28, 2002. The public comment period ended at 5:00 p.m. on May 28, 2002. Written and/or oral comments were submitted by: Clean Water Action; Lloyd, Gosselink, Blevins, Rochelle, Baldwin & Townsend, P.C., on behalf of Synagro, Inc. (Synagro-1); Matt Bochat, Technical Services Director, Synagro, Inc. (Synagro-2); and one individual.

RESPONSE TO COMMENTS

*General*

An individual commented that the commission should convene a panel of expert stakeholders to review and to make recommendations on the rules and procedures within Chapter 312.

**The commission appreciates the comment. This rulemaking primarily addresses legislative changes as required by THSC, §361.121. The new statute imposes a September 1, 2003 deadline to obtain a permit for land application of Class B sewage sludge. In order to make the required changes expeditiously, this rulemaking is limited to legislative requirements and additional**

**changes in the same sections. The commission intends to do a comprehensive review of this chapter in the near future. The second rulemaking will include stakeholders in a group formed in accordance with current rules.**

An individual recommended that the application process be changed to include only a certification from the applicant regarding the quality of sludge instead of the analytical data on the sludge.

**The commission will continue to implement the existing requirements for test data with application to track the sources used and to verify both that applicants can calculate agronomic rates correctly and that the sludge is of sufficient quality for land application. The commission believes that the recommendation is a major change which could be considered in the future review of the rules. The commission has made no changes in response to this comment.**

An individual commented that the rule language for ground and surface water distances and restrictions for shallow groundwater should be deleted because the data can be reviewed on a case-by-case basis. The individual suggested the review should be made based on the management plan for the farm and not as if the activity was for disposal.

**The commission disagrees with the comment. The commission believes that the current distance requirements and restrictions are appropriate to protect human health and the environment. The requirements related to distance from surface water and features that might provide transport to groundwater and related to restrictions based on the presence of shallow groundwater are in 30**

**TAC §312.44, which is not part of this rulemaking. Additionally, THSC, §361.121 specifically requires that hydrological characteristics of the surface and groundwater within one-quarter mile of the site be contained in permit applications. The commission has made no changes in response to this comment.**

An individual commented that the rules should encourage the use of environmental management plans and that the commission should consult and use National Biosolids Partnership guidelines in writing and implementing these rules.

**The commission appreciates the comment. The commission intends to consider these types of issues in the future rulemaking for this chapter. Input on changes to the rules will be solicited from a balanced group of stakeholders, as required by 30 TAC Chapter 5. The commission has made no changes in response to this comment.**

Synagro-1 commented that its primary concern is related to timing and cost. The lack of grandfathering for existing sites after August 31, 2003, will require efficient review by the commission and, when required, consideration by the State Office of Administrative Hearings (SOAH). Synagro-2 expressed concern that potential applicants may avoid land application of sludge because of cost, delays, and uncertainty. Additionally, it commented that the beneficial land application of sewage sludge should be encouraged and promoted by the commission. Finally, it stated that Synagro will work with the commission staff as quickly and efficiently as possible to avoid process delays.

**The commission appreciates the comment. The commission staff will review and make decisions on permit applications on a reasonable and timely basis to comply with THSC, Chapter 361, Texas Water Code (TWC), Chapter 26, and with Chapter 312. The commission will continue to promote the proper use of sewage sludge over disposal, as mandated by THSC, §361.022(c). The commission has made no changes in response to this comment.**

An individual expressed concern that if permit applications are approved wherein the level of contaminants are lower than the limits in the rules and then the levels rise while staying within the permissible range, that the permit may be challenged because its approval was based on the lower levels in the application.

**The commission appreciates the comment. As was done for registrations for the same activities, permits for the land application of Class B sewage sludge will show the permissible ranges for the contaminants of concern that can be in the sludge that is used at the specific site. In certain cases, the commission may need to require that only sludge with contaminant levels below the limits in 30 TAC §312.43(b)(1) be used at a specific site, but in such cases the permit will still show the contaminant limits for the site. The commission has made no changes in response to this comment.**

Synagro-2 and an individual commented that other states review and issue authorizations for the land application of sewage sludge in less time than the commission estimates will be required to issue permits under this rule.

**The commission appreciates the response. The commission does not believe that other states' processes are comparable to the permitting process required by THSC, §361.121. The processing and review of permit applications will be performed as expeditiously as possible in order to comply with statutory and regulatory requirements of the State of Texas. The commission has made no changes in response to this comment.**

*Section 312.4*

An individual commented that the ED should not have the authority to deny activities related to Class A sewage sludge land application because the material is safe for use and the potential for a denial may cause marketing problems. The individual further commented that the notice in the generator's discharge permit and notification to the commission involving Class A sewage sludge activities should include statements that all rules and regulations will be followed and that utilization of the material should protect the environment and have minimal impact on human activity. The individual also commented that the rules do not give specific guidelines for denying an activity.

**The commission disagrees with the comment. The proposed language will allow the ED to review and deny within the 30-day period before the activities would commence. As proposed, the ED is allowed to deny the activities only if there is a conflict with current rules or the permit requirements of the generators. This amendment is intended to give opportunity for the ED to verify if all requirements are being met. The commission believes that the general guidelines form sufficient basis for denial of authorization for Class A sewage sludge activities. The commission also believes that receiving notifications of planned activities for Class A sewage sludge is more**

**protective of health and the environment and allows for more efficient enforcement of the rule than would be provided by only certification statements in the notification forms. The commission has made no changes in response to this comment.**

An individual commented that a general prior notification should be allowed under §312.4(b)(2)(B) rather than listing all planned recipients of Class A sewage sludge, and stated that the existing rules require generators to document the users so there is no reason for such notification.

**The commission disagrees with this comment. The requirement to list all persons proposed to receive the sewage sludge directly from the generator is currently in the rules in §312.4(b)(2)(B) and is not being changed in this rulemaking. This information is important to the commission for tracking where sludge is used and verifying the information reported annually. The commission has made no changes in response to this comment.**

*Section 312.10*

An individual commented that §312.10(k) is not clear on whether the addition or changing of sludge resources requires a major amendment, and he suggested that this action should only require notification in the annual reports and not an amendment to the permit.

**The commission disagrees in part with the comment. Section 312.10(k) states that the provisions for the major amendments for permits are provided in 30 TAC Chapter 305, Subchapter D. The provisions for major amendments to registrations also are listed in §312.10(k). The commission**

**notes that this listing erroneously mentions permits, and this language is being changed. However, the changes or additions to sludge sources are currently not considered major amendments and will not be such in the amended rule. Sections 312.11(h) and 312.12(b)(2) state that changes in sludge sources only require advance notice to the commission with information to show its quality and proper use, rather than amendments. The commission believes that the advance notice is important for tracking and verification purposes, including verification that the permittee can recalculate agronomic rates properly. The commission has deleted two incorrect references to "permit" in part of §312.10(k) to clarify that the specific provisions apply to registrations. As stated in the proposed language, a major amendment to a permit is under Chapter 305.**

*Section 312.11*

An individual commented that the rules for Class B sewage sludge permits should require submitting information on the status of water bodies nearby, including those listed on the 303d list, and suggested that the application should identify the location of any water bodies, including streams with bed and banks on the proposed site or adjacent properties and any significant surface features, including springs, sink holes, and caves. In addition, the individual recommended that the application include an evaluation of risk from a proposed site to any water body that might arise from normal operations and from significant storm events, together with steps the operator will take if a significant storm event is predicted to occur. Additionally, the individual recommended that the contingency plans include the requirements for the steps to be taken to avoid runoff and steps to be taken in case of runoff. Finally,

the individual suggested that groundwater be treated in a similar fashion with appropriate application requirements.

**The commission disagrees with the comment in part. The information on the status of water bodies, including their 303d list status, applies to waste water discharge activities. Because these are non-discharge permits, the commission believes this information is not applicable to the beneficial use of sewage sludge at land application sites. However, since some waters are impaired for nutrients, the commission will consider this factor in reviewing permits in the watersheds of these water bodies. This information does not need to be included in the application because the commission knows which water bodies are impaired. If conditions at a specific site require additional protection, the commission may impose additional restrictions on a case-by-case basis.**

**The commission agrees that the applicant must identify the location of water bodies. Section 312.11(d)(4) requires that the hydrological characteristics of the surface and ground water within one-quarter mile of the site be identified in the application. The application requires a United States Geological Survey topographical map of the proposed application site and surrounding areas which shows all the relevant surface features and conduits to the groundwater, as well as appropriate buffer zones.**

**Chapter 312 includes safeguards to prevent potential risks to surface water and groundwater through various requirements for management practices and other restrictions. Additionally, whenever shallow groundwater that might be affected by land application is present, the permit**

**application is reviewed by the Groundwater Protection Team, and any additional restrictions recommended are incorporated into the permit. Because the rules and permits will contain requirements that limit the amounts of sewage sludge that can be used at a site and its placement, and since significant rain events produce a very large dilution factor, the commission does not believe that plans are needed for the control of runoff from such events; the use of sewage sludge is no more hazardous that other agricultural operations. The commission has made no changes in response to this comment.**

An individual recommended that the rules require that the permit applications include information on the vegetation at the site and on adjacent property, and suggested that the application identify any plant or animal species on the state and federal list of endangered or threatened species that might be present at a proposed site. Additionally, the individual recommended that the application include a description of the steps the applicant proposes to protect any important habitat.

**The commission disagrees with this comment in part. The application form requires the information on crops grown on the site, as authorized by 30 TAC §305.46. However, the site applicant is free to change the crops during the term of the permit, but such changes must be reported in the annual report for the site. Vegetation outside the application area will not be affected by land application as long as the management practices required in the rules and permits are followed. The beneficial use of the sewage sludge is limited to agricultural purposes and will have no more impact than other agricultural practices. The permit application is not required to identify endangered species, but §312.44(a) requires that the use of sewage sludge not cause harm**

**to threatened or endangered species or their habitat. In addition, THSC, §361.067 and 30 TAC Chapter 39 require notification to Texas Parks and Wildlife Department to allow their review and comment on any permit application to avoid impact to a threatened or endangered species. Furthermore, all permits for land applying Class B sewage sludge that will be issued will contain the language prohibiting impacts to the species or their habitat found in §312.44(a). The commission has made no changes in response to this comment.**

An individual commented that the commission should provide greater public participation by expanding the notification of nearby landowners from only adjacent properties to properties within one-quarter mile of the site. This change would insure that critical information is known to the commission and not hidden from the public. The individual also contended that the commission does not perform inspection of sites prior to making decisions on application, necessitating the public to serve as an alternative source of information.

**The commission disagrees with the comment in part. First, 30 TAC §§39.413(1), 305.45, and 312.11 require an applicant to provide notice to adjacent land owners, who are also identified in the map attached to the application. To be consistent with current registration requirements and water quality procedural rules, the commission will continue to comply with the applicable water quality notice requirements. The commission welcomes public input on both registrations and permits, and all relevant information is considered when deciding what action to take on a specific application. The new THSC, §361.121 and this rulemaking allow greater public participation by establishing that Class B land application cases are subject to public meetings and contested case**

**hearings. Although not required by rule or law, the practice of the commission is to inspect all new sites that apply for sludge land application activities that require an authorization. The commission has made no changes in response to this comment.**

Synagro-2 commented that the information requested in the application for a permit to land apply Class B sewage sludge is excessive, and that revisions to the application forms since they were first developed have made it difficult to provide all needed information and revising the information submitted is unreasonable.

**The commission disagrees with the comment. The information contained in the permit application forms is generally the same as what has been required for registrations for several years. The commission understands that changes to the application form have caused some confusion and apologizes for the inconvenience. However, since THSC, §361.121 does not allow continued operation of registered sites unless a permit is obtained by September 1, 2003, the commission believes that the interests of both the regulated community and the public were best served by developing and distributing the permit application form as quickly as possible, even though this decision did lead to changes to the form as the rules were developed. Although information may need to be updated in some applications that were submitted early, the commission believes that this inconvenience is offset by the higher probability that a permit can be issued by the statutory deadline, thereby avoiding temporary closure of the site. The commission further believes that revising information that is not adequate is necessary for the proper review and issuance of permits. The commission has made no changes in response to this comment.**

*Section 312.12*

An individual commented that background soil sampling requirements in §312.12(b)(1)(I) could be greater than 80 acres, as long as sufficient sampling is performed for each soil type, and suggested that a permit require more rigorous testing prior to the land application of the sludge. Additionally, the individual suggested that each permit application have a soil sampling plan and a rationale for the plan.

**The commission disagrees with the comment. The commission believes that ten to 15 samples per 80 acres is the minimum sampling required to adequately characterize soil that will receive sewage sludge. Even in tracts with uniform soil, a variety of factors can cause differing levels of plant nutrients and contaminants in different parts of the application area. Reduced sampling frequencies increase the risk of missing such areas of elevated nutrients or contaminants. The registrations and permits currently require ongoing testing of both soil and sludge. The frequency of testing will continue to be annually for soil and based on §312.46(a) for sludge. The commission believes these frequencies are the minimum required to protect public health and environment in light of changes in nutrient levels in soils over time and the variability of composition of the sludge produced at wastewater treatment plants. The commission disagrees that a soil sampling plan is needed if sampling is based on soil types or characterization, but a sampling plan is required if testing is done on a different basis in order to demonstrate that the soils have been characterized properly. The commission has made no changes in response to this comment.**

## SUBCHAPTER A: GENERAL PROVISIONS

### §§312.4, 312.10 - 312.12

STATUTORY AUTHORITY

The repeals are adopted under TWC, §5.102, which provides the commission with the general powers to carry out its duties under the TWC; and §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state.

The adopted repeals implement TWC, §5.102, General Powers, and §5.103, Rules.

**§312.4. Sewage Sludge Permit, Registration, or Notification Required.**

**§312.10. Permit and Registration Applications Processing.**

**§312.11. Permits.**

**§312.12. Registration of Land Application Activities.**

## SUBCHAPTER A: GENERAL PROVISIONS

### §§312.4, 312.10 - 312.13

STATUTORY AUTHORITY

The amendment and new sections are adopted under TWC, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the TWC and other laws of this state and to establish and approve all general policies of the commission; and the Texas Solid Waste Disposal Act, THSC, §361.011, which provides the commission with the authority to manage municipal waste, THSC, §361.013, which provides the commission with the authority to adopt rules and establish fees for the transportation and disposal of solid waste, THSC, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge such as reuse, THSC, §361.024, which provides the commission authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste, THSC, §361.061, which provides the commission the authority to issue permits for the construction, operation, and maintenance of solid waste facilities that store, process, or dispose of solid waste, and THSC, §361.121, which provides the commission the authority to require a permit for the land application of Class B sewage sludge and charge a fee for the permit.

**§312.4. Requirements for Sewage Sludge Permit, Registration, or Notification.**

(a) Permits. Except where in conflict with other chapters in this title, a permit shall be required before any storage, processing, incineration, or disposal of sewage sludge, except for storage allowed under this section, §312.50 of this title (relating to the Storage and Staging of Sludge at Beneficial Use Sites), §312.61(c) of this title (relating to Applicability), §312.147 of this title (relating to Temporary Storage), and §312.148 of this title (relating to Secondary Transportation of Waste). Any permit authorizing disposal of sewage sludge shall be in accordance with any applicable standards of Subchapter C of this chapter (relating to Surface Disposal) or §312.101 of this title (relating to Incineration). No permit will be required under this chapter if issued pursuant to other requirements of the commission, as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(1) Effective September 1, 2003 a permit is required for the beneficial land application of Class B sewage sludge. All provisions for this activity in any registration are void after August 31, 2003.

(2) The effective date of a permit is the date that the executive director signs the permit.

(3) Site permit information on file with the commission shall be confirmed or updated, in writing, whenever the mailing address, telephone number of the owner or operator is changed, or whenever requested by the commission.

(4) If a permit is required under this chapter, all activities at the site under this chapter, except transportation, shall be incorporated in the permit.

(b) Notification of certain Class A sewage sludge land application activities.

(1) If sewage sludge meets the metal concentration limits in §312.43(b)(3) (Table 3) of this title (relating to Metal Limits), the Class A pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction), it will not be subject to the requirements of §312.10 of this title (relating to Permit and Registration Applications Processing), §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registration of Land Application Activities), and §312.13 of this title (relating to Actions and Notices), except as provided in this subsection.

(2) At least 30 days prior to engaging in such activity for the first time, any generator in Texas or any person who first conveys sewage sludge from out of state into the State of Texas and who proposes to store, land apply, or market and distribute sewage sludge meeting the standards of this subsection shall submit a notification form approved by the executive director. A completed notification shall be submitted to the Agriculture Team of the Water Quality Division by certified mail, return receipt requested. The notification shall contain information detailing:

(A) sewage sludge composition, all points of generation, and wastewater treatment facility identification;

(B) name, address, and telephone number of all persons who are being proposed to receive the sewage sludge directly from the generator;

(C) a description in a marketing and distribution plan which describes any of the following activities:

(i) to sell or give away sewage sludge directly to the public, including a general description of the types of end uses proposed by persons who will be receiving the sewage sludge;

(ii) methods of distribution, marketing, handling, and transportation of the sewage sludge;

(iii) a reasonable estimate of the expected quantity of sewage sludge to be generated or handled by the person making the notification; and

(iv) a description of any proposed storage and the methods which will be employed to prevent surface water runoff of the sewage sludge or contamination of groundwater.

(3) Thirty days after the notification has occurred, the activities regulated by this subsection may commence unless the executive director determines that the activities do not meet the requirements of this subsection or an applicant's permit. After receiving a notification, the executive

director may review a generator's activities or the activities of the person conveying the sewage sludge into Texas to determine whether any or all of the requirements of this chapter are necessary. In making this determination, the executive director will consider specific circumstances related to handling procedures, site conditions, or the application rate of the sewage sludge. The executive director may review a proposal for storage of sewage sludge, considering the amount of time and the amount of material described on the notification. Also, in accordance with §312.41 of this title (relating to Applicability), any reasonably anticipated adverse effect that may occur due to a metal pollutant in the sewage sludge may also be considered.

(4) Annually, on September 1, each person subject to notification of certain Class A sewage sludge activities required by this subsection shall provide a report to the commission, which shows in detail all activities described in paragraph (2) of this subsection that occurred in the reporting period. The report shall include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report shall also include a description of the annual amounts of sewage sludge provided to each initial receiver from the in-state generator and for persons who convey out of state sewage sludge into Texas, the amounts provided from this person directly to any initial receivers. This report can be combined with the annual report(s) required under §312.48 of this title (relating to Reporting), §312.68 of this title (relating to Reporting), or §312.123 of this title (relating to Annual Report).

(c) Registration of land application sites.

(1) If the requirements in Subchapter B of this chapter (relating to Land Application for Beneficial Use) are met and a sewage sludge does not meet the requirements of subsection (b) of this section, a site shall be registered for the land application of sewage sludge for beneficial use, in accordance with the requirements of §312.12 and §312.13 of this title unless a permit is issued under §312.11 of this title.

(2) Registrations for the use of Class B sewage sludge shall expire on or before August 31, 2003. If the registration is scheduled to expire after August 31, 2003, and authorizes the use of Class A sewage sludge, domestic septage or water treatment plant sludge, only the provisions for the use of Class B sewage sludge shall expire on August 31, 2003; the other provisions shall expire on the expiration date of the registration or when a permit is issued for the site.

(3) Upon the effective date of these rules:

(A) the executive director shall not accept registration applications for land application of Class B sewage sludge;

(B) only permit applications will be accepted; and

(C) for pending registration applications, the executive director shall process either the pending registration application or a permit application (if submitted) for the same site, but not both.

(4) The effective date for the registration of a site at which sewage sludge is applied to the land for beneficial use is the date that the executive director signs the registration, in accordance with §312.12(d) of this title. Site registration information on file with the commission shall be confirmed or updated, in writing, whenever:

(A) the mailing address and/or telephone number of the owner or operator is changed; or

(B) requested by the executive director.

(d) Term limits. Term Limits for registrations or permits shall not exceed five years.

(e) Authorization. No person may cause, suffer, allow, or permit any activity of land application for beneficial use of sewage sludge unless such activity has received the prior written authorization of the commission.

(f) Permit application fees for Class B sewage sludge.

(1) Any person who applies for a permit, permit renewal, permit modification, permit amendment, or permit transfer shall pay a permit application fee. The fees in this subsection supercede the fees in §305.53 of this title (relating to Application Fee). The commission shall not consider an application for final decision until such time as the permit application fee is paid. All permit

application fees must be made payable to the Texas Commission on Environmental Quality and paid at the time the application for a permit is submitted.

(2) The executive director shall not process an application until all delinquent annual fees and delinquent administrative penalties owed the commission by the applicant or for the site as delineated in the permit application are paid in full. Any permittee to whom a permit is transferred shall be liable for payment of the annual fees assessed for the permitted entity/site on the same basis as the transferor of the permit, as well as any outstanding fees and associated penalties owed the commission. If the applicant is not the permittee at the time fees become delinquent or against whom administrative penalties are assessed, the executive director may for good cause waive the applicant's obligation under this section for payment of delinquent annual fees or delinquent administrative penalties.

(3) An applicant may file a written request for a refund in the amount of 50% of the permit application fee paid if the permit is not issued. No fees shall be refunded after a permit, permit renewal, permit modification, permit amendment, or permit transfer has been issued by the commission. Transfer of a permit shall not entitle the transferor permittee to a refund, in whole or part, of any fee already paid by that permittee.

(4) The permit application fees shall be between $1,000 and $5,000, based on the quantity of sewage sludge to be applied annually under the permit, as shown in the following schedule:

(A) $1,000 if the quantity is 2,000 dry tons or less;

(B) $2,000 if the quantity is greater than 2,000 dry tons but less than or equal to 5,000 dry tons;

(C) $3,000 if the quantity is greater than 5,000 dry tons but less than or equal to 10,000 dry tons;

(D) $4,000 if the quantity is greater than 10,000 dry tons but less than or equal to 20,000 dry tons; or

(E) $5,000 if the quantity is greater than 20,000 dry tons.

**§312.10. Permit and Registration Applications Processing.**

(a) Applications for permits, registrations, or other types of approvals required by this subchapter shall be reviewed by staff for administrative completeness within 14 calendar days of receipt of the application by the executive director.

(b) Permit and registration applications must include all required information shown in §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registration of Land Application Activities), or §312.142 of this title (relating to Transporter Registrations).

(c) Upon receipt of an application for a permit or registration, not to include transportation registrations, the executive director shall assign the application a number for identification purposes, and prepare a statement of the receipt of the application and declaration of administrative completeness which is suitable for publishing or mailing, and forward that statement to the chief clerk. The chief clerk shall notify every person entitled to notification of a particular application as described in §312.13 of this title (relating to Actions and Notice).

(d) The notice of receipt of an application for permit or registration and declaration of administrative completeness shall contain the information in Chapter 39 of this title (relating to Public Notice).

(e) Nothing in this section shall be construed so as to waive the notice and processing requirements concerning the application and the draft permit in accordance with Chapter 39, Subchapters H and J of this title (relating to Public Notice), Chapter 50, Subchapters E - G of this title (relating to Action on Applications and Other Authorizations), Chapter 55, Subchapters D - F of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment), or Chapter 305, Subchapters C, D, and F of this title (relating to Consolidated Permits) for applications for sewage sludge land application, processing, disposal, storage, or incineration permits.

(f) Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit for sewage sludge land application, processing, disposal, storage, or incineration is subject to the application processing procedures and requirements found in §§281.18 -

281.24 of this title (relating to Applications Returned; Technical Review; Extensions; Draft Permit, Technical Summary, Fact Sheet, and Compliance Summary; Referral to Commission; Application Amendment; and Effect of Rules).

(g) Any person who is required to obtain a registration, or who requests an amendment, modification, or renewal of a registration to land apply sewage sludge (including domestic septage) is subject to the application processing procedures and requirements found in §§281.18 - 281.20 of this title. If a permit application for land application of Class B sewage sludge is filed for a site holding a current registration before the expiration of the registration, the registration will remain in effect until either the permit is issued or denied, or until August 31, 2003, whichever occurs first.

(h) The registration for land application of sewage sludge shall be cancelled upon receipt of a written request for cancellation from either the site operator or landowner. The executive director will provide notice to the other party that cancellation has been requested and that cancellation will occur ten days from the issuance of notice. This notice is provided merely as a courtesy by the commission and is not mandatory for cancellation.

(i) In order to transfer a registration or permit for land application of sewage sludge, both the site operator and the landowner must sign the transfer application. An application for transfer that is not signed by both the site operator and the landowner will be considered a request for cancellation.

(j) If a registration or permit for a site is cancelled, a complete application for registration or permit must be submitted in order to reauthorize the site. If the application is approved, the site will be authorized under the same site registration or permit number.

(k) For permits, a major amendment is defined in Chapter 305, Subchapter D of this title. For purposes of this chapter concerning registrations and except as provided in subsection (l) of this section, a major amendment for a registration is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a registration or a substantive change in the information provided in an application for registration regarding sewage sludge. Changes to registrations which are not considered major include, but are not limited to, typographical errors, changes which result in more stringent monitoring requirements, changes in site ownership, changes in site operator, or similar administrative information.

(l) Upon the effective date of this chapter, the executive director will process as a minor amendment a request by an existing permittee or registrant to change any substantive term, provision, requirement, or a limiting parameter in a permit or registration which implemented prior regulations of the commission, when it is no longer a requirement of this chapter. Notice requirements of §312.13 of this title are not applicable to a minor amendment for a registration.

**§312.11. Permits.**

(a) The provisions of this section set the standards and requirements for permit applications to land apply, process, store, dispose of, or incinerate sewage sludge.

(b) Any person who is required to obtain or who requests a new permit or an amendment, modification, or renewal of a permit under this section is subject to the permit application procedures of §1.5(d) of this title (relating to Records of the Agency), §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), and §305.47 of this title (relating to Retention of Application Data). For a land application permit, the applicant must be:

(1) the owner of the application site if the sewage sludge was generated outside this state; or

(2) the site operator if the sewage sludge was generated in this state.

(c) An application for a permit must include all information in accordance with Chapter 281, Subchapter A of this title (relating to Application Processing) and Chapter 305, Subchapter C of this title (relating to Application for Permit), and must also include the following.

(1) for an incineration or disposal facility, the map required by §305.45(a)(6) of this title shall provide the following information:

(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;

(B) the name and mailing address of the owner of each tract of land within one-half mile of any portion of the tract of land where the permitted activities would occur, as such information can be determined from the current county tax rolls or other reliable sources;

(C) the source(s) of the information on the surrounding property owners; and

(D) the list of property owners must be provided both as a hard copy, either on the map or as an attached list, and in one of the following manners:

(i) in electronic format; or

(ii) on four sets of self-adhesive mailing labels for all property owners;

(2) for beneficial use land application, processing, or storage facility, the map required by §305.45(a)(6) of this title must provide the following information:

(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;

(B) the name and mailing address of the owner of each tract of land adjacent to the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources;

(C) the source(s) of the information on the surrounding property owners; and

(D) the list of property owners in both a hard copy, either on the map or as an attached list, and in one of the following manners:

(i) in electronic format; or

(ii) on four sets of self-adhesive mailing labels for all property owners;

(3) a notarized affidavit from the applicant(s) verifying land ownership of the permitted site or landowner agreement to the proposed activity; and

(4) any information provided under this subsection must be submitted in quadruplicate form.

(d) An applicant for a permit to land apply Class B sewage sludge must also provide the following information:

(1) the information listed in §312.12(b)(1)(A) - (C) of this title (relating to Land Application Activities);

(2) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), based on the following:

(A) the samples must be taken from the zero to six inch zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples must be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample must be taken from each United States Department of Agriculture (USDA) Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(E) an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(F) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(3) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), based on the following:

(A) separate samples must be taken from the zero to six inch and from the six to 24 inch zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples must be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample must be taken from each USDA Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(E) alternate methods for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(F) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(4) information necessary to identify the hydrological characteristics of the surface water and groundwater within one-quarter mile of the site to be permitted; and

(5) any information under this subsection shall be submitted in quadruplicate form.

(e) Any person who is issued a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the permit characteristics and standards set forth in §305.122 of this title (relating to Characteristics of Permits), §305.123 of this title (relating to Reservation in Granting Permit), §305.124 of this title (relating to Acceptance of Permit, Effect), §305.125 of this title (relating to Standard Permit Conditions), §305.126(d) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits), §305.127 of this title (relating to Conditions to be

Determined for Individual Permits), §305.128 of this title (relating to Signatories to Reports), and §305.129 of this title (relating to Variance Procedures).

(f) If any provision of a permit is violated during its term, the permit holder is required to report to the executive director the noncompliance in accordance with Texas Health and Safety Code, §361.121(d)(5) and §305.125(9) of this title. Each permit for the land application of sewage sludge must contain a provision requiring such reporting. Report of such information shall be provided orally or by facsimile transmission (fax) to the appropriate Regional Office within 24 hours of the permit holder becoming aware of the noncompliance. A written submission of such information shall also be provided by the permit holder to the Regional Office and to the Enforcement Division at the commission's Central Office (MC 149) within five working days of becoming aware of the noncompliance. The written submission must contain the following information:

(1) a description of the noncompliance and its cause;

(2) the potential danger to human health, safety, or the environment;

(3) the period of noncompliance, including exact dates and times;

(4) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(5) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(g) Each sewage sludge land application permit must include a reference to the maximum quantity of sewage sludge that may be land applied under the permit.

(h) Any permittee who requests a new permit or an amendment, modification, or renewal of a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, denials, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendment), §305.63 of this title (relating to Renewal), §305.64 of this title (related to Transfer of Permits), §305.65 of this title (relating to Corrections of Permits), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension). The permittee shall have the continuing obligation to provide immediate written notice to the executive director of any changes to a permit or to information on soil or subsurface conditions at the site, and to provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods. Information submitted under this subsection shall be in quadruplicate form.

**§312.12. Registration of Land Application Activities.**

(a) After August 31, 2003, all registrations for the beneficial use of Class B sewage sludge will be void. Registrations for the beneficial use of Class A sewage sludge, water treatment plant sludge, and/or domestic septage will remain valid until they expire, are renewed, are cancelled, or are revoked.

(b) Except as provided in §312.4(b) of this title (relating to Requirements for Sewage Sludge Permit, Registration, or Notification) and §312.11 of this title (relating to Permits), any person who intends to land apply sewage sludge for beneficial use shall:

(1) submit to the executive director an original, completed application form approved by the executive director, along with the appropriate number of copies of the registration application. Each applicant shall submit to the executive director such information as may reasonably be required to enable the executive director to determine whether such land application for beneficial use activities are compliant with the terms of this chapter. Such information may include, but is not limited to the following:

(A) a description and composition of the sewage sludge;

(B) a description of all processes generating the sewage sludge (including domestic septage) to be applied at the site;

(C) information about the site and the planned management of the sewage sludge, including the name, address, and telephone number of any landowner or operator at the site and the following information:

(i) whether such material is managed on-site and/or off-site from its point of generation;

(ii) a description of each on-site land application beneficial use unit or tract, including the name, address, and telephone number of all landowners, or the same information from a landowner acting as a spokesperson(s) for all the landowners, so long as the spokesperson submits to the executive director a sworn statement allowing the spokesperson to act for other persons;

(iii) a listing of the types of sewage sludge managed in each unit or tract;

(iv) a detailed description of the beneficial use occurring at each unit or tract of land where application of sewage sludge is proposed, including proposed waste management and crop production methods; and

(v) information regarding soil characteristics and subsurface conditions where the land application site will be located;

(D) the verified legal status of the applicant(s), as applicable;

(E) the notarized signature of each applicant, checked against commission requirements in accordance with §305.44 of this title (relating to Signatories to Applications);

(F) a notarized affidavit from the applicant(s) verifying land ownership or landowner agreement to the proposed activity;

(G) technical reports and supporting data required by the application;

(H) for applications for major amendments or new registrations, information concerning surrounding landowners, including the following:

(i) a map depicting the approximate boundaries of the tract of land owned or under the control of the applicant and each residential or business address and owner of all the tracts of land bordering the perimeter of any portion of the site;

(ii) a list on or attached to the map of the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls and other reliable sources;

(iii) the source of the information; and

(iv) the list of property owners in both a hard copy and in one of the following manners:

(I) in electronic format; or

(II) on four sets of self-adhesive mailing labels for all property owners;

(I) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), based on the following:

(i) the samples must be taken from the zero to six inch zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples must be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample must be taken from each USDA Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(v) an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(vi) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(J) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), based on the following:

(i) separate samples must be taken from the zero to six inch and from the six to 24 inch zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) the soil samples must accurately show soil conditions in the application area(s) and must be taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples shall be comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample must be taken from each USDA Natural Resource Conservation Service soil type (soils with the same characterization or texture) unless an alternate method is used;

(v) an alternate method for defining areas to be sampled may be used, such as sampling by agricultural management units or other defined areas; and

(vi) when using an alternate method, a sampling plan must also be included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

(K) any information provided under this paragraph must be submitted to the executive director in quadruplicate form.

(2) have the continuing obligation to immediately provide written notice to the executive director of any changes, requests for an amendment, modification, or renewal of a registration, or any additional information concerning changes in land ownership, changes in site control, or operator, changes in waste composition, changes in the source of sewage sludge, or waste

management methods, and information regarding soils and subsurface conditions where the operation is to be located. Any information provided under this paragraph shall be submitted to the executive director in duplicate form.

(c) The executive director shall determine, after review of any application for registration to land apply sewage sludge (including domestic septage) for beneficial use, whether to approve or deny an application in whole or in part, deny with prejudice, suspend the authority to conduct an activity for a specified period of time, or amend or modify the proposed activity requested by the applicant. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for major amendment of any existing application. In consideration of such an application, the executive director will consider all relevant requirements of this chapter and consider all information pertaining to those requirements received by the executive director regarding the application. The written determination on any application, including any authorization granted, shall be mailed to the applicant upon the decision of the executive director.

(d) At the same time the executive director's decision is mailed to the applicant, notice of this decision shall also be mailed to all parties who submitted written information on the application, as described in §312.13(c)(2) and (3) of this title (relating to Actions and Notice).

**§312.13. Actions and Notice.**

(a) Applicability. This section sets forth the manner in which action will be taken on applications filed with the executive director for either a permit or a registration to land apply, store, process, dispose of, or incinerate sewage sludge.

(b) Permit actions.

(1) All permit applications are subject to the standards and requirements as set forth in Chapter 39 of this title, Subchapters H - J (relating to Public Notice), Chapter 50 of this title, Subchapters E - G (relating to Action on Applications and Other Authorizations), and Chapter 55 of this title, Subchapters D - F (relating to Requests for Reconsideration and Contested Case Hearings; Public Notice).

(2) For disposal and incineration permit applications, notice shall be provided pursuant to Chapter 39 of this title to all owners of properties within one-half mile of the border of any portion of the tract of land where the permitted activities would occur. For beneficial use, processing, and storage permit applications, notice shall be provided pursuant to Chapter 39 of this title to all owners of properties adjacent to any portion of the tract of land where the permitted activities will occur. The tract of land includes all contiguous properties under the ownership or control of the applicant.

(c) Registration actions.

(1) The public notice requirements of this subsection apply to new applications for a registration, and to applications for major amendment of a registration for land application of sewage sludge (including domestic septage). The requirements of this subsection do not apply to sites where only Class A sewage sludge that has been authorized for marketing and distribution is to be land applied for beneficial use.

(2) The chief clerk of the commission shall mail Notice of Receipt of Application and Declaration of Administrative Completeness along with a copy of the registration application, to the county judge in the county where the proposed site for land application of sewage sludge (including domestic septage) is to be located.

(3) The chief clerk of the commission shall mail Notice of Receipt of Application and Declaration of Administrative Completeness to the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map.

(4) Each notice shall specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notices shall specify that the registration application has been provided to the county judge and that it is available for review by interested parties.

(5) Any application for a registration to beneficially use sewage sludge (including domestic septage) is subject to the standards and requirements for actions concerning amendments,

modifications, transfers and renewals of registrations, as set forth in Chapter 50, Subchapter G of this title.

(d) Public comment on registrations. A person may provide the commission with written comments on any new or major amendment applications to register a site for land application of sewage sludge (including domestic septage). The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for registration, pursuant to §312.12(c) of this title (relating to Registration of Land Application Activities).

(e) Motion to overturn. The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn under §50.139 of this title (relating to Motion to Overturn) to overturn the executive director's final approval or denial of an application.