

The Texas Commission on Environmental Quality (TCEQ or commission) adopts amendments to §§312.4, 312.8 - 312.13, 312.44, 312.48, 312.82, 312.122, and 312.145. Sections 312.4, 312.8, 312.9, 312.11 - 312.13, 312.44, 312.48, 312.82, and 312.145 are adopted *with changes* to the proposed text as published in the April 8, 2005, issue of the *Texas Register* (30 TexReg 2032). Sections 312.10 and 312.122 are adopted *without changes* to the proposed text and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

This rulemaking implements the requirements of House Bill (HB) 2546, 78th Legislature, 2003, which provides additional restrictions and requirements for persons who land apply Class B sewage sludge to help ensure more protection for citizens, land, and water. A corresponding rulemaking is published in this issue of the *Texas Register* that includes changes to 30 TAC Chapter 37, Financial Assurance.

SECTION BY SECTION DISCUSSION

Administrative changes are adopted throughout the sections to bring the existing rule language into agreement with Texas Register requirements, agency guidelines, and guidance provided in the *Texas Legislative Council Drafting Manual*, November 2004.

Section 312.4, Requirements for Sewage Sludge Permit, Registration, or Notification, is adopted to amend the title to "Required Authorizations or Notifications." A provision is added to allow continuation of land application of Class B sewage sludge under existing registration if an administratively complete permit application has been submitted on or before September 1, 2002. This

extension will cease when a final decision on the permit application is made by the commission.

Subsection (a)(1) adds the requirement that all registrations for the land application of Class B sewage sludge expire on or before August 31, 2003, unless an administratively complete permit application was submitted on or before September 1, 2002, in which case the person holding such registration may continue operations under the existing registration until final commission action on the permit application. Paragraph (1) states that for registrations that also authorize 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 expire on August 31, 2003; the other provisions expire on the expiration date of the registration or when a permit issuing the use of Class A sewage sludge, domestic septage, or water treatment plant sludge is issued for the site. The sentence "All provisions for this activity in any registration are void after August 31, 2003." is deleted from this subsection. A new paragraph (5) adds the HB 2546 provision prohibiting the issuance of a Class B sludge land application permit for a unit located in a county that borders the Gulf of Mexico and is within 500 feet of any water well or surface water. Subsection (b)(2) has been reformatted and names have been updated to enhance clarity and readability. Existing language in subsection (c) has been deleted and replaced with new subsection (c)(1) stating that "Effective September 1, 2003, registrations may only be obtained for the land application of Class A sludge that does not meet the requirements of subsection (b) of this section, water treatment plant sludge, and domestic septage." New subsection (c)(2) states that "The effective date of the registration 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 must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or requested by the executive director." The commission deletes subsection (d) pertaining to

term limits for registrations and permits and moves the unchanged language to §312.10(m), and reletters current subsection (e) as subsection (d). The commission deletes subsection (f) pertaining to Class B sewage sludge land application permit application fees and moves the language to §312.9. Section 312.4 is adopted with minor changes to the proposed text to improve readability.

Section 312.8, General Definitions, adds, deletes, and renumbers definitions as appropriate. Paragraph (1) is adopted with changes to the proposed text to provide consistency with 30 TAC §321.32(35). A new paragraph (10) has been added to define “Applied uniformly.” Paragraph (15), which defines “CFR” as Code of Federal Regulations, is deleted because it is not necessary. A new paragraph (16) has been added to define “Certified nutrient management specialist.” A new paragraph (41) has been added to define “Harvesting.” A new paragraph (43) has been added to define “Incorporation.” A new paragraph (53) has been added to define “Major sole-source impairment zone.” Paragraph (53) is adopted with changes to the proposed text to provide consistency with Texas Water Code, §26.502. A new paragraph (78) has been added to define “Sole-source surface drinking water supply.” Paragraph (79) is adopted with changes to the proposed text to more accurately reflect the term as defined in 30 TAC Chapter 332, Composting.

Section 312.9, Sludge Fee Program, changes subsections (b) and (d) to modify the due date for annual reports to September 30. Subsection (d) is amended to add a requirement that provides the annual reporting period to be the period from September 1 of the previous calendar year to August 31 of the current calendar year, and the fees assessed in subsection (b) must be paid by the registrant or permittee on or before the due date specified in the invoice. In subsection (d), “Texas Natural Resource

Conservation Commission (TNRCC)” is replaced with “Texas Commission on Environmental Quality.”

A new subsection (g) is added to list the requirements for permit application fees for land application of Class B sewage sludge that were previously listed under §312.4(f). New subsection (g)(1) clarifies that the applications for a minor amendment or permit transfer related to Class B sewage sludge land application permits would be subject to 30 TAC §305.53 instead of the fee structure of the new subsection (f). Section 312.9 is adopted with a minor change to improve readability.

Section 312.10, Permits and Registration Applications Processing, rewords subsection (b) to improve clarity. Outdated names are corrected in subsections (c) and (d). Subsection (d) updates references by adding a reference to Texas Water Code, §5.552(c), and requires that the public notice include the anticipated date of the first land application of sludge to the proposed land application unit as required by HB 2546. Subsection (f) is revised to improve clarity. The existing language in subsection (g), which was nullified by HB 2546, is deleted and replaced with new language that states “All registration applications for Class A sludge, water treatment plant sludge, and domestic septage are subject to the application processing procedures and requirements in §§281.18 - 281.20 of this title.” Subsection (h) extends the provisions of this subsection pertaining to cancellation requests to permits. Subsection (i) clarifies that it is applicable to all registrations and permits instead of to only registrations and permits for land application of sewage sludge. Subsection (j) corrects a grammatical error. Subsection (k) updates applicability of requirements for major amendments to registrations by excluding sludge registrations that are now authorized under a permit. The commission creates a new subsection (m) to incorporate the language moved from §312.4(d), pertaining to term limits for registrations and permits.

Section 312.11, Permits, amends subsection (a) by adding the unchanged existing language in subsection (d)(5), which will be deleted. Subsection (c) deletes the existing language and restructures the subsection for clarity and readability as well as adds requirements from HB 2546 that applications for land application of Class B sludge include the name and mailing address of the owner of each tract of land within 1/4 mile of the site. The first line of subsection (d) has been reworded to improve clarity and readability. In subsection (d)(2)(F), relettered as subsection (d)(2)(E), the acronym for NRCS is used as it was defined previously in the section. New subsection (d)(5) requires Class B sewage sludge land application permit applicants to submit proof of a commercial liability insurance policy and environmental impairment policy. New subsection (d)(6) requires Class B sewage sludge land application permit applicants to submit a nutrient management plan (NMP) prepared by a certified nutrient management specialist. Existing subsection (d)(5) is deleted and moved to subsection (a). New subsection (e) requires permittees of Class B sewage sludge land application sites to comply with the requirements of Chapter 37, Subchapter V. Existing subsections (e) - (g) are relettered to subsections (f) - (h). Existing subsection (h) is relettered to subsection (i); the requirements for permittees to provide written notice of changes under certain conditions are moved to new subsection (j) for clarity and readability. New subsection (k) provides requirements for facilities located in a major sole-source impairment zone. New subsection (k)(1) states that the permittee is required to have a nitrogen and phosphorus-based NMP prepared by a certified nutrient management specialist according to certain standards. New subsection (k)(2) requires that when annual soil tests indicate phosphorus levels greater than 200 parts per million in the zero to six-inch zone, the permittee is required to follow a nutrient utilization plan (NUP) approved by the commission. New subsection (k)(3)(A) - (H) lists the types of people who are authorized to develop a NUP. New subsection (k)(4) requires a permittee to follow the

NUP until the soil phosphorus level is reduced below 200 parts per million. Subsection (k)(4) is adopted with changes to the proposed text to clarify the definition of critical phosphorus level.

Thereafter, the permittee can resume implementing the requirements of the NMP. New subsection (k)(5) requires the permittee to maintain a vegetative cover in the designated buffer zones. Section 312.11 is adopted with minor changes to the proposed text to improve readability.

Section 312.12, Registration of Land Application Activities, amends the title of the section to “Registrations.” Subsection (b) updates the title of a section cited, deletes a reference to §312.11, and rewords this subsection to limit its applicability to Class A sludge, water treatment sludge, and/or domestic septage. The words “sewage sludge” have been replaced by “material to be land applied” as appropriate throughout subsection (b)(1), except subsection (b)(1)(C)(iv), where the word “sewage sludge” was replaced by “Class A sludge, water treatment sludge, and/or domestic septage.” This was amended because, as required by HB 2912 and HB 2546, a Class B sewage sludge land application site requires a permit, not a registration. Subsection (b)(1)(E) deletes the requirement that the notarized signature of each applicant be checked against the commission requirements. The words “as applicable” are inserted in subsection (b)(1)(H) - (J) to account for the fact that the information requested to be submitted may be applicable to only certain types of registration applications. Subsection (b)(1)(H)(ii) has been reworded and reformatted for clarity and readability and to also include existing requirements from subsection (b)(1)(H)(iv). Subsection (b)(2) deletes the words “have the continuing obligation to” to improve clarity and readability. Subsection (c) has been streamlined to eliminate its applicability to sewage sludge registrations, which are no longer allowed under HB 2912 and HB 2546. A new subsection (e) requires that the special provisions for sites located in sole-source

impairment zones listed in §312.11(k) are also applicable to registered land application sites. Section 312.12 is adopted with a change to the proposed text to correct the citation in subsection (e) from §312.11(1) to §312.11(k) relating to the major sole-source impairment zone.

Section 312.13, Actions and Notice, amends subsection (b)(2) to delete redundant citations and deletes the outdated requirement of notice to landowners adjacent to any proposed Class B sewage sludge land application site. New subsection (b)(3) lists the new notice requirements of HB 2546 for land application of Class B sewage sludge. New subsection (b)(3)(A) lists the applicable citations, requires that the public notice include anticipated first date of land application of sludge to the site, and requires that the notice also be sent to landowners living on the property located within 1/4 mile of any proposed site. New subsection (b)(3)(B) notes that a resident landowner within 1/4 mile of the proposed sludge land application site is an “affected person.” Subsection (b)(3)(B) is adopted with changes from the proposed text based on a comment received during the comment period to include that the rule does not exclude other persons from being considered “affected persons.” Amendments to subsection (c) correct citations and names, remove inconsistencies, and update the rules, including removal of an outdated phrase regarding registration requirements for Class B sludge land application, which is no longer allowed. Subsection (c)(1) is amended to specify that the public notice requirements are not applicable to water treatment sludge registrations.

Section 312.44, Management Practices, improves clarity and readability in subsections (a) and (b). Subsection (c) is amended to include the existing subsection (d) and is reworded, simplified, and reformatted to improve clarity and readability. New subsection (c) adds a provision requiring

vegetative cover on a 200-foot buffer zone for sites located in a major sole-source impairment zone.

Subsection (e) is relettered to subsection (d), the citations are corrected, and updates are made to the language to extend the buffer zone requirements to permits as well as registrations. Subsection (f) is relettered as subsection (e), and language is moved to relettered subsection (f). Subsection (g) is relettered as subsection (f) and now includes the provision that is deleted and moved from the previous subsection regarding the option of temporarily allowing the sludge application rates to exceed the agronomic rates on a case-by-case basis for reclamation sites. Subsections (h) and (i) are relettered as subsections (g) and (h), respectively. New subsection (h)(2) - (6) uses the word "shall" in place of "may" with regard to the site conditions under which sewage sludge "may" not be applied. Subsection (j) is relettered as subsection (i) and makes a grammatical correction. Subsection (k) is relettered to subsection (j), and subsection (j)(1) is reworded to provide that a land application site "must"(previously "shall") be selected and the site operated in a manner to prevent public health nuisances. Subsection (l) is relettered to subsection (k) and extends soil testing requirements to sludge land application permits. Subsection (k)(1) and (2) is reworded for clarity and readability. In accordance with HB 2546, new subsection (l) requires that a sign be posted on a Class B sewage sludge land application site meeting the specified requirements, and new subsection (m) specifies that a Class B sewage sludge land application permit holder must ensure that the sludge is delivered to the site in a covered container with covering secured firmly at the front and back.

Section 312.48, Reporting, updates names and makes several grammatical corrections. The amendments to paragraph (1) group the current provisions with some changes for clarity and readability into a new paragraph (1)(A) and require that annual reports be submitted by September 30 of each year.

New paragraph (1)(B) incorporates the current provisions in paragraph (2) and also changes the submission date to September 30. New paragraph (1)(C) requires that a Class B sewage sludge land application permit holder submit evidence of compliance with an NMP, a completed Annual Sludge Summary Report Form, and proof of commercial liability insurance and environmental impairment insurance. New paragraph (2) lists the requirements for and the contents of quarterly reports, and the due dates for Class B sewage sludge land application permit holders. Section 312.48 is adopted with minor changes to improve readability.

Section 312.82, Pathogen Reduction, makes grammatical corrections to subsection (a) by replacing “give” with “given” where applicable to sewage that is prepared for sale or given away in a bag or other container. Subsection (b)(1)(C) is updated to require that a minimum of seven representative samples of sewage sludge be taken for fecal coliform testing by adding the word “representative” to be consistent with 40 Code of Federal Regulations Part 503. Subsection (b)(3)(F) requires that the turf grown on land where sewage sludge is applied “may” (instead of “shall”) not be harvested for at least one year after application of sewage when this turf is used on a land with high potential for public exposure or a lawn. Section 312.82 is adopted with minor changes to improve readability.

Section 312.122, Registrations and Permits, replaces TNRCC with commission and Watershed Management Division with Water Quality Division.

Section 312.145, Transporters - Recordkeeping, modifies subsection (a) related to trip tickets by replacing “shall” with “must.” Subsection (b)(2) is amended to rename the catchline. Subsection

(b)(4) is amended to rename the catchline and to change the reporting deadline to be more reasonable.

Subsection (d) updates the agency name.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rules are not subject to §2001.0225 because they do not meet the criteria for 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.

The specific intent of the adopted rules is to provide additional protection with regard to water quality and the health and safety of citizens who live near a land application site. Therefore, it is not anticipated that the adopted rules will 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. The commission concludes that these adopted rules do not meet the definition of a major environmental rule.

Furthermore, even if the adopted rules did meet the definition of a major environmental rule, the rules are not subject to Texas Government Code, §2001.0225, because they do not meet any of the four

applicable requirements specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, 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.

In this case, the adopted rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the adopted rules do not exceed an express requirement of state law but instead implement the statutory requirements for the land application of sewage sludge. Third, there is no delegation agreement that would be exceeded by these adopted rules because none relates to this subject matter area. Fourth, the commission adopts these rules under Texas Health and Safety Code, §361.121, as amended by HB 2546 and not solely under the commission's general powers.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these rules and performed an assessment of whether the rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the adopted rules is to provide additional protection with regard to water quality and the health and safety of citizens who live near a land application site. The adopted rules would substantially advance this stated purpose by adding several requirements intended to improve tracking and reporting of regulated sites and the

quality of sludge; adding several additional requirements for applicants, such as NMPs and proof of insurance coverage; and restricting permittees from accepting sludge transported in open containers.

Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking of private real property because the adopted rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the adopted rules would improve the commission's ability to ensure proper management of the land application of Class B sewage sludge. Because the regulation does not affect real property, it does not burden, restrict, or limit an owner's right to property or reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. Therefore, these adopted rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendments are consistent with CMP goals and policies because the rulemaking is an administrative

rule that includes financial assurance, notice, and other procedural requirements for permit holders of Class B sewage sludge; will not have direct or significant adverse effect on any coastal natural resource areas; will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendments will not violate (exceed) any standards identified in the applicable CMP goals and policies.

PUBLIC COMMENT

A public hearing for this rulemaking was held on May 3, 2005, in Austin. The comment period closed on May 9, 2005. Written comments were received from Lower Colorado River Authority (LCRA); City of Austin (COA); Water Environment Association of Texas (WEAT); and the commission's Office of Public Interest Counsel (OPIC).

All commenters either opposed portions of the rulemaking or supported the rulemaking with suggested changes.

RESPONSE TO COMMENTS

OPIC commented that the proposed rules may be interpreted as providing that only landowners within 1/4 mile of the proposed land application unit who live on the land are considered "affected persons." Therefore, OPIC recommended adding a sentence to the end of §312.13(b)(3)(B) that reads: "This rule does not exclude other persons from being considered 'affected persons' under 30 TAC section 55.203."

The commission agrees with this comment and made the suggested change.

LCRA commented that the rules do not adequately address how soil conditions are determined. LCRA suggested specifying use of soil moisture monitoring devices to eliminate subjectivity and prevent sludge application during these conditions.

The commission does not agree with this comment. Current commission rules allow the executive director to impose more restrictive requirements on a case-by-case basis when necessary to protect public health and the environment. The commission has required additional requirements including usage of moisture monitoring devices prior to sludge land application in the past. No change has been made to the proposed rules in response to this comment.

LCRA commented that the commission should modify §312.44(h)(6) to specify that the floodway designation made by the Federal Emergency Management Agency (FEMA) is acceptable, as well as by the commission, based on credible scientific information provided by the applicant or by an affected or interested party.

This comment is beyond the scope of the current rulemaking, the purpose of which is to implement the requirements of HB 2546. In addition, it is the current practice of the TCEQ to use FEMA maps to determine whether the site is in floodway. No changes have been made to the proposed rules in response to this comment.

LCRA commented that §312.44 should be modified to prohibit land application of sludge in the 100-year floodplain.

This comment is beyond the scope of the current rulemaking, the purpose of which is to implement the requirements of HB 2546. In addition, current commission rules prohibit land application of sludge within a designated floodway. Commission rules also prohibit land application of sludge during rainstorms or during periods in which surface soils are water-saturated. No changes have been made to the proposed rules in response to this comment.

LCRA commented that a stakeholder process should be undertaken by the commission to develop a guidance document for standardizing the requirements for the Sludge Management Plan.

This comment is beyond the scope of the current rulemaking, the purpose of which is to implement the requirements of HB 2546. No changes have been made to the proposed rules in response to this comment.

LCRA commented that §312.11 should be modified to include a provision for the executive director to have the discretion, on a case-by-case basis, to require surface water quality monitoring at sites where sludge land application could impact human health and/or the environment.

This comment is beyond the scope of the current rulemaking, the purpose of which is to implement the requirements of HB 2546. In addition, §312.44(c) and (i) list the required best

management practices and other requirements that are designed to prevent contamination of surface waters from the land application of sewage. These provisions include restrictions on slopes, permeability, thickness of acceptable permeability soils, and other restrictions such as the permittee is not allowed to apply sewage sludge when surface soils are water-saturated, frozen, or snow-covered, or during rainstorms. Finally, §312.6 gives the executive director the authority to impose more stringent requirements on a case-by-case basis when necessary to protect public health and the environment. No changes have been made to the proposed rules in response to this comment.

COA commented that the critical phosphorus limit of 200 parts per million, while appropriate for certain soils and situations, may be unnecessarily restrictive for other soils and conditions. COA recommended modifying the proposed rules to incorporate a provision that permits consideration of a “critical phosphorus level” other than 200 parts per million on a case-by-case basis based on the soil analysis and soil types.

The commission does not agree with this comment. The critical phosphorus limit applies only in a major sole-source impairment zone, and the 200 parts per million limit for phosphorous is consistent with other agency rules regarding the major sole-source impairment zones. No changes have been made to the proposed rules in response to this comment.

WEAT commented that an NMP and NUP required for sites located in impaired water quality zones in §312.11(d)(6) were originally developed for manures and fertilizers, and therefore, should be modified

to account for lower phosphorus availability in biosolids (sewage sludge) relative to manure and fertilizers. WEAT commented that the latest research findings, specifically by O'Conner, *et al.*, 2002, as well as by Peters and Basta, 1996, should be taken into consideration. WEAT commented that Pennsylvania and Florida are considering such changes.

This comment is beyond the scope of the current rulemaking, the purpose of which is to implement the requirements of HB 2546. No changes have been made to the proposed rules in response to this comment.

WEAT commented that while §312.11(d)(6) states that an NMP be developed by a certified nutrient management specialist, it does not adequately address the proper training of a certified nutrient management specialist to address consideration of lower phosphorus availability in biosolids (sewage sludge) relative to manures and fertilizers because most of the body of knowledge in this area is based on manure and fertilizer usage, not sewage sludge. WEAT commented that it encourages the commission to work with providers of certified nutrient management specialists to ensure training is tailored to land application of sewage sludge.

The training requirements for certification of nutrient management specialists apply to land application of sewage sludge as well as manures. The providers of this training are currently working with the United States Department of Agriculture Natural Resources Conservation Service to revise the tool for nutrient management/utilization plans for wastes to include the utilization of sludge. This revised tool, which is taught during the training to certify nutrient

management specialists, should be available soon for future training classes. No changes have been made to the proposed rules in response to this comment.

WEAT commented that the commission should sponsor an advisory group to explore the phosphorus availability and NMPs unique to sewage sludge land application.

This comment is beyond the scope of the current rulemaking, the purpose of which is to implement the requirements of HB 2546. No changes have been made to the proposed rules in response to this comment.

SUBCHAPTER A: GENERAL PROVISIONS

§§312.4, 312.8 - 312.13

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §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 Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission adopt rules to require an applicant to submit

certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The adopted amendments implement HB 2546.

§312.4. Required Authorizations or Notifications.

(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 in accordance with 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 registrations for the land application of Class B sewage sludge will expire on or before August 31, 2003. A person holding a registration to land apply sewage sludge who submitted an administratively complete permit application on or before September 1, 2002, may

continue operations under the existing registration until final commission action on the permit application. For registrations that also authorize 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 will expire on August 31, 2003; the other provisions will expire on the expiration date of the registration or when a permit authorizing the use of Class A sewage sludge, domestic septage, or water treatment plant sludge is issued for the site.

(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 must be confirmed or updated, in writing, whenever the mailing address and/or 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.

(5) The commission may not issue a Class B sewage sludge permit for a land application unit that is located both in a county that borders the Gulf of Mexico and within 500 feet of any water well or surface water.

(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) 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) 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 notification to the executive director, at least 30 days prior to engaging in such activities for the first time on a form approved by the executive director. A completed notification form shall be submitted to the Land Application Team of the Water Quality Division by certified mail, return receipt requested. The notification must 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 that 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 that 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 must include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report must 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) Effective September 1, 2003, registrations may only be obtained for the land application of Class A sludge that does not meet the requirements of subsection (b) of this section, water treatment plant sludge, and domestic septage.

(2) The effective date of the registration 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 must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or requested by the executive director.

(d) 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.

§312.8. General Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) **25-year, 24-hour rainfall event** - The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed from it.

(2) **Active sludge unit** - A sludge unit that has not closed and/or is still receiving sewage sludge.

(3) **Aerobic digestion** - The biochemical decomposition of organic matter in sewage sludge into carbon dioxide, water, and other by-products by microorganisms in the presence of free oxygen.

(4) **Agricultural land** - Land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

(5) **Agricultural management unit** - A portion of a land application area contained within an identifiable boundary, such as a river, fence, or road, where the area has a known crop or land use history.

(6) **Agronomic rate** - The whole sludge application rate (dry weight basis) designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

(7) **Anaerobic digestion** - The biochemical decomposition of organic matter in sewage sludge into methane gas, carbon dioxide, and other by-products by microorganisms in the absence of free oxygen.

(8) **Annual metal loading rate** - The maximum amount of a pollutant (dry weight basis) that can be applied to a unit area of land during a 365-day period.

(9) **Annual whole sludge application rate** - The maximum amount of sewage sludge that can be applied to a unit area of land during a 365-day period.

(10) **Applied uniformly** - Sewage sludge placed on the land for beneficial use such that the agronomic rate is not exceeded anywhere in the application area.

(11) **Apply sewage sludge or sewage sludge applied to the land** - Land application or the spraying/spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil.

(12) **Aquifer** - A geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

(13) **Base flood** - A flood that has a 1% chance of occurring in any given year.

(14) **Beneficial use** - Placement of sewage sludge onto land in a manner that complies with the requirements of Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites), and does not exceed the agronomic need or rate for a cover crop,

or any metal or toxic constituent limitations that the cover crop may have. Placement of sewage sludge on the land at a rate below the optimal agronomic rate will be considered a beneficial use.

(15) **Bulk sewage sludge** - Sewage sludge that is not sold or given away in a bag or other container for application to the land.

(16) **Certified nutrient management specialist** - An organization in Texas or an individual who is currently certified as a nutrient management specialist through a United States Department of Agriculture-Natural Resources Conservation Service recognized certification program.

(17) **Class A sewage sludge** - Sewage sludge meeting one of the pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction).

(18) **Class B sewage sludge** - Sewage sludge meeting one of the pathogen reduction requirements in §312.82(b) of this title.

(19) **Contaminate an aquifer** - To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) §141.11, as amended, to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(20) **Cover** - Soil or other material used to cover sewage sludge placed on an active sludge unit.

(21) **Cover crop** - Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(22) **Cumulative metal loading rate** - The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

(23) **Density of microorganisms** - The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

(24) **Displacement** - The relative movement of any two sides of a fault measured in any direction.

(25) **Disposal** - The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal does not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(26) **Domestic septage** - Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives

only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

(27) **Domestic sewage** - Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(28) **Dry weight basis** - Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

(29) **Experimental use** - Non-routine beneficial use land application or reclamation projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(30) **Facility** - Includes all contiguous land, structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge.

(31) **Fault** - A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(32) **Feed crops** - Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

(33) **Fiber crops** - Crops such as flax and cotton.

(34) **Final cover** - The last layer of soil or other material placed on a sludge unit at closure.

(35) **Floodway** - A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(36) **Food crops** - Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(37) **Forest** - Land densely vegetated with trees and/or underbrush.

(38) **Grit trap** - A unit/chamber that allows for the sedimentation of solids from an influent liquid stream by reducing the flow velocity of the influent liquid stream. In a grit trap, the inlet and the outlet are both located at the same vertical level, at, or very near, the top of the unit/chamber; the outlet of the grit trap is connected to a sanitary sewer system. A grit trap is not designed to separate oil and water.

(39) **Grit trap waste** - Waste collected in a grit trap. Grit trap waste includes waste from grit traps placed in the drains prior to entering the sewer system at maintenance and repair shops, automobile service stations, car washes, laundries, and other similar establishments. The term does not include material collected in an oil/water separator or in any other similar waste management unit designed to collect oil.

(40) **Groundwater** - Water below the land surface in the saturated zone.

(41) **Harvesting** - Any act of cutting, picking, drying, baling, gathering, and/or removing vegetation from a field, or storing.

(42) **Holocene time** - The most recent epoch of the Quaternary period, extending from the end of the Pleistocene Epoch to the present. Holocene time began approximately 10,000 years ago.

(43) **Incorporation** - Mixing the applied material evenly through the top three inches of soil.

(44) **Industrial wastewater** - Wastewater generated in a commercial or industrial process.

(45) **Institution** - An established organization or corporation, especially of a public nature or where the public has access, such as child care facilities, public buildings, or health care facilities.

(46) **Land application** - The spraying or spreading of sewage sludge onto the land surface; the injection of sewage sludge below the land surface; or the incorporation of sewage sludge into the soil so that the sewage sludge can either condition the soil or fertilize crops or vegetation grown in the soil.

(47) **Land with a high potential for public exposure** - Land that the public uses frequently and/or is not provided with a means of restricting public access.

(48) **Land with a low potential for public exposure** - Land that the public uses infrequently and/or is provided with a means of restricting public access.

(49) **Leachate collection system** - A system or device installed immediately above a liner that is designed, constructed, maintained, and operated to collect and remove leachate from a sludge unit.

(50) **Licensed professional geoscientist** - A geoscientist who maintains a current license through the Texas Board of Professional Geoscientists in accordance with its requirements for professional practice.

(51) **Liner** - Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners must be of suitable material with more than 30% passing a number 200 sieve, have a liquid limit greater than 30%, a plasticity index greater than 15, compaction of greater than 95% Standard Proctor at optimum moisture content, and will be at least two feet thick placed in six-inch lifts. Synthetic liners must be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(52) **Lower explosive limit for methane gas** - The lowest percentage of methane in air, by volume, that propagates a flame at 25 degrees Celsius and atmospheric pressure.

(53) **Major sole-source impairment zone** - A watershed that contains a reservoir that is used by a municipality as a sole source of drinking water supply for a population of more than 140,000, inside and outside of its municipal boundaries; and into which at least half of the water flowing is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended, at least in part because of concerns regarding pathogens and phosphorus, and for which the commission at some time prepared and submitted a total maximum daily load standard.

(54) **Metal limit** - A numerical value that describes the amount of a metal allowed per unit amount of sewage sludge (e.g., milligrams per kilogram of total solids); the amount of a pollutant that can be applied to a unit area of land (e.g., kilograms per hectare); or the volume of a material that can be applied to a unit area of land (e.g., gallons per acre).

(55) **Monofill** - A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(56) **Municipality** - A city, town, county, district, association, or other public body (including an intermunicipal agency of two or more of the foregoing entities) created by or under state law; an Indian tribe or an authorized Indian tribal organization having jurisdiction over sewage sludge management; or a designated and approved management agency under Clean Water Act, §208, as amended. The definition includes a special district created under state law, such as a water district, sewer district, sanitary district, or an integrated waste management facility as defined in Clean Water Act, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(57) **Off-site** - Property that cannot be characterized as "on-site."

(58) **On-site** - The same or contiguous property owned, controlled, or supervised by the same person. If the property is divided by public or private right-of-way, the access must be by crossing the right-of-way or the right-of-way must be under the control of the person.

(59) **Operator** - The person responsible for the overall operation of a facility or beneficial use site.

(60) **Other container** - Either an open or closed receptacle, including, but not limited to, a bucket, box, or a vehicle or trailer with a load capacity of one metric ton (2,200 pounds) or less.

(61) **Owner** - The person who owns a facility or part of a facility.

(62) **Pasture** - Land that animals feed directly on for feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(63) **Pathogenic organisms** - Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(64) **Person who prepares sewage sludge** - Either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge.

(65) **Place sewage sludge or sewage sludge placed** - Disposal of sewage sludge on a surface disposal site.

(66) **Pollutant** - An organic or inorganic substance, or a pathogenic organism that, after discharge and upon exposure, ingestion, inhalation, or assimilation into an organism either directly from the environment or indirectly by ingestion through the food chain, could, on the basis of information available to the executive director, cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformations in either organisms or offspring of the organisms.

(67) **Process or processing** - For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(68) **Public contact site** - Land with a high potential for contact by the public. This includes, but is not limited to, public parks, ball fields, cemeteries, plant nurseries, turf farms, and/or golf courses.

(69) **Range land** - Open land with indigenous vegetation.

(70) **Reclamation site** - Drastically disturbed land that is reclaimed using sewage sludge. This includes, but is not limited to, strip mines and/or construction sites.

(71) **Runoff** - Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

(72) **Seismic impact zone** - An area that has a 10% or greater probability that the horizontal ground level acceleration of the rock in the area exceeds 0.10 gravity once in 250 years.

(73) **Sewage sludge** - Solid, semi-solid, or liquid residue generated during the treatment of domestic sewage in treatment works. Sewage sludge includes, but is not limited to, domestic septage, scum, or solids removed in primary, secondary, or advanced wastewater treatment

processes; and material derived from sewage sludge. Sewage sludge does not include ash generated during preliminary treatment of domestic sewage in a treatment works.

(74) **Sewage sludge debris** - Solid material such as rubber, plastic, glass, or other trash that may pass through a wastewater treatment process or sludge process or may be collected with septage. This solid material is visibly distinguishable from sewage sludge. This material does not include grit or screenings removed during the preliminary treatment of domestic sewage at a treatment works, nor does it include grit trap waste.

(75) **Sludge lagoon** - An existing surface impoundment located on site at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment must be considered an active sludge unit, as defined in this section.

(76) **Sludge unit** - Land that only sewage sludge is placed for disposal. A sludge unit must be used for sewage sludge. This does not include land that sewage sludge is either stored or treated.

(77) **Sludge unit boundary** - The outermost perimeter of a surface disposal site.

(78) **Sole-source surface drinking water supply** - A body of surface water that is identified as a public water supply in §307.10 of this title (relating to Appendices A - E) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(79) **Source-separated organic material** - As defined in §332.2 of this title (relating to Definitions).

(80) **Specific oxygen uptake rate** - The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(81) **Staging** - Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days, prior to the land application of the sewage sludge.

(82) **Store or storage** - The placement of sewage sludge on land for longer than seven days.

(83) **Temporary storage** - Storage of waste regulated under this chapter by a transporter, which has been approved in writing by the executive director, in accordance with §312.147 of this title (relating to Temporary Storage).

(84) **Three hundred-sixty-five day period** - A running total that covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(85) **Total solids** - The materials in sewage sludge that remain as residue if the sewage sludge is dried at 103 degrees Celsius to 105 degrees Celsius.

(86) **Transporter** - Any person who collects, conveys, or transports sewage sludge, water treatment plant sludges, grit trap waste, grease trap waste, chemical toilet waste, and/or septage by roadway, ship, rail, or other means.

(87) **Treat or treatment of sewage sludge** - The preparation of sewage sludge for final use or disposal. This includes, but is not limited to, thickening, stabilization, and dewatering of sewage sludge. This does not include storage of sewage sludge.

(88) **Treatment works** - Either a federally owned, publicly owned, or privately owned device or system used to treat (including recycle and reclaim) either domestic sewage or a combination of domestic sewage and industrial waste of a liquid nature.

(89) **Unstabilized solids** - Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(90) **Unstable area** - Land subject to natural or human induced forces that may damage the structural components of an active sewage sludge unit. This includes, but is not limited to, land that the soils are subject to mass movement.

(91) **Vector attraction** - The characteristic of sewage sludge that attracts rodents, flies, mosquitoes, or other organisms capable of transporting infectious agents.

(92) **Volatile solids** - The amount of the total solids in sewage sludge lost when the sewage sludge is combusted at 550 degrees Celsius in the presence of excess oxygen.

(93) **Water treatment sludge** - Sludge generated during the treatment of either surface water or groundwater for potable use, which is not an industrial solid waste as defined in §335.1 of this title (relating to Definitions).

(94) **Wetlands** - Those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

§312.9. Sludge Fee Program.

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) **Annual fee** - A fee charged to each person holding a registration or permit under the commission's authority in Texas Health and Safety Code, Chapter 361, or a permit issued under the commission's authority in Texas Water Code, Chapter 26, except that a fee will not be assessed under this chapter as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(2) **Reported** - Information compiled and submitted to the commission that tracks the amount of waste being stored, treated, processed, transported, or disposed of in the state; tracks the amount of processing, transporting, and disposal capacity and reserve capacity; and enables equitable assessment and collection of fees.

(3) **Payment** - Receipt by the commission of the full amount of the annual fee(s) due.

(b) Except as provided in subsection (f) of this section, the amount of the annual fee that is assessed is determined by weight of solids disposed of and reported to the commission as of September 30, of each year. Failure to report the disposal of sewage sludge or water treatment sludge does not exempt a registrant or permittee from this fee. The fees are as follows.

(1) The minimum fee assessed against each registration or permit is \$100, regardless of whether the site is active or inactive.

(2) When water treatment sludge is mixed with a Class B sewage sludge or when sewage sludge that is classified as Class B is applied to the land for beneficial use as described in Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites) the fee is \$0.75 per dry ton.

(3) When sewage sludge or water treatment sludge is applied to a site for disposal and the disposal was authorized by the commission or predecessor agency prior to October 1, 1995, the fee is \$1.25 per dry ton.

(4) When sewage sludge is applied to a site for disposal or when water treatment sludge is applied to a site for disposal and the activity requires a permit as specified in Subchapter F of this chapter (relating to Disposal of Water Treatment Sludge), and the disposal is authorized by the commission or predecessor agency on October 1, 1995, or thereafter, the fee is \$1.25 per ton.

(5) When water treatment sludge is applied to a site for disposal and the activity does not require a permit as specified in Subchapter F of this chapter, the fee is \$0.20 per dry ton.

(6) When sewage sludge is fired in a sewage sludge incinerator as described in Subchapter E of this chapter (relating to Guidelines and Standards for Sludge Incineration), the fee is \$1.25 per dry ton.

(c) An annual transporter fee is assessed against each person or entity holding a registration to transport sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grease trap waste, or grit trap waste issued in accordance with Subchapter G of this chapter (relating to Transporters and Temporary Storage Provisions). The amount of the annual fee must be based upon the total annual volume of waste transported by the transporter under each registration and reported to

the commission as of June 15, each year. Failure to report the transportation of waste does not exempt a registrant from this fee. The fees are as follows.

(1) For a total annual volume transported of 10,000 gallons (50 cubic yards) or less, the fee is \$100.

(2) For a total annual volume transported greater than 10,000 gallons (50 cubic yards) but equal to or less than 50,000 (250 cubic yards), the fee is \$250.

(3) For a total annual volume transported greater than 50,000 gallons (250 cubic yards) but equal to or less than 200,000 gallons (1,000 cubic yards), the fee is \$400.

(4) For a total annual volume transported of greater than 200,000 gallons (1,000 cubic yards), the fee is \$500.

(d) Sludge permit and registration holders shall submit the annual reports in accordance with §312.48(1) of this title (relating to Reporting) no later than September 30 of each calendar year, for a reporting period covering September 1 of the previous calendar year to August 31 of the current calendar year. Fees assessed in subsection (b) of this section must be paid by the registrant or permittee on or before the due date specified in the invoice each year. Fees assessed in subsection (c) of this section must be paid by the registrant after billing by the executive director, prior to September 1, of each year. Fees must be paid by check, certified check, or money order payable to the Texas

Commission on Environmental Quality. The permittee or registrant of a facility failing to make payment of the fees imposed under this subchapter when due shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(e) Failure of the registrant or permittee to submit the required fee within 30 days of billing, shall be sufficient cause for the commission to revoke the registration or permit and authorization to process or dispose of waste. Any entity to whom a registration or permit is transferred shall be liable for payment of the annual fee on the same basis as the transferor.

(f) No fee will be assessed for sewage sludge or water treatment sludge composted with source-separated organic material at a composting facility, including a composting facility located at a permitted landfill site. This subsection does not apply if the sludge is not used as compost and is deposited in a surface disposal site or landfill.

(g) Sludge permit holders shall submit permit application fees for Class B sewage sludge.

(1) Any person who applies for a new permit, permit renewal, or permit amendment shall pay a permit application fee. The fees in this subsection relating to application for a permit, permit renewal, or major amendment supercede the fees in §305.53 of this title (relating to Application Fee). An application for a minor amendment or permit transfer must be submitted in accordance with §305.53 of this title. The commission may 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 commission and paid at the time the application for a permit is submitted.

(2) The executive director may 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 liability under this subsection 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 will be refunded after a new permit, permit renewal, permit modification, permit amendment, or permit transfer has been issued by the commission. Transfer of a permit will 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 will 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 information required by §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 Registration).

(c) Upon receipt of an application for a permit or registration, excluding transportation registrations, the executive director shall assign the application a number for identification purposes, and prepare a Notice of Receipt of Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permits where applicable, which is suitable for publishing or mailing, and forward that notice to the Office of the Chief Clerk. The Office of 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 Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permit where applicable, must contain the information required by Chapter 39 of this title (relating to Public Notice), Texas Water Code, §5.552(c), and the approximate anticipated date of the first land application of sludge to the proposed land application unit.

(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 Applicability and General Provisions and Public Notice of Water Quality Applications and Water Quality Management Plans), Chapter 50, Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director), Chapter 55, Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or Contested Case

Hearing), or Chapter 305, Subchapters C, D, and F of this title (relating to Application for Permit or Post-Closure; Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits; and Permit Characteristics and Conditions) for applications for sewage sludge land application, processing, disposal, storage, or incineration permits.

(f) All permit applications for sewage sludge land application, processing, disposal, storage, or incineration are subject to the application processing procedures and requirements in §§281.18 - 281.24 of this title (relating to Applications Returned; Technical Review; Extension; Draft Permit, Technical Summary, Fact Sheet, and Compliance History; Referral to Commission; Application Amendment; and Effect of Rules).

(g) All registration applications for Class A sludge, water treatment plant sludge, and domestic septage are subject to the application processing procedures and requirements in §§281.18 - 281.20 of this title.

(h) A registration or permit will 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) To transfer a registration or permit, 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. Changes to registrations that are not considered major include, but are not limited to, typographical errors, changes that 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 that 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.

- (m) Term limits for registrations or permits may not exceed five years.

§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. Any information provided under this subsection must be submitted in quadruplicate form.

(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) A permit application must include all information in accordance with Chapter 281, Subchapter A of this title (relating to Applications Processing) and Chapter 305, Subchapter C of this title (relating to Application for Permit or Post-Closure Order), and must also include the following:

(1) the map required by §305.45(a)(6) of this title that provides 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 located:

(i) within 1/4 mile of the site to be permitted, as such information can be determined from the current county tax rolls at the time the application is filed, or other reliable sources, for Class B sewage sludge beneficial land use permit applications submitted on or after September 1, 2003, or applications submitted before September 1, 2003, but not administratively complete by the commission by that date;

(ii) within 1/2 mile of the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources, for a sewage sludge incineration or disposal permit application; and

(iii) adjacent to the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources, at the time the application is filed for a domestic septage or Class A sewage sludge beneficial use land application, or sewage sludge processing or storage facility;

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

(D) the list of property owners. The list must be provided both as a hard copy, either on the map or as an attached list, and in electronic format or on four sets of self-adhesive mailing labels; and

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

(d) A permit application for land application of Class B sewage sludge must also include the following information:

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

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

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

(B) soil samples that accurately show soil conditions in the application area(s) and that are 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 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 taken from each United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) soil type (soils with the same characterization or texture), unless an alternate method is used; and

(E) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS 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 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) soil samples that accurately show soil conditions in the application area(s) and that are 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 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 taken from each USDA NRCS soil type (soils with the same characterization or texture), unless an alternate method is used;

(E) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan also included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

(4) information necessary to identify the hydrological characteristics of the surface water and groundwater within 1/4 mile of the site to be permitted;

(5) except for applications by political subdivisions, proof of a commercial liability insurance policy and an environmental impairment policy or a similar policy in accordance with Chapter 37, Subchapter V of this title (relating to Financial Assurance for Class B Sewage Sludge for Land Application Units); and

(6) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the NRCS Practice Standard Code 590.

(e) A permittee of a Class B sewage sludge land application site shall comply with the requirements of Chapter 37, Subchapter V of this title.

(f) 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).

(g) 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 must 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 must 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.

(h) 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.

(i) 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 Renewal), §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).

(j) The permittee shall immediately provide written notice to the executive director of any changes to a permit or to information on soil or subsurface conditions at the site, and provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods.

(k) For land application sites located in a major sole-source impairment zone, the permittee is subject to the following provisions.

(1) The operator shall have a nutrient management plan (nitrogen and phosphorus) prepared by a certified nutrient management specialist in accordance with the USDA NRCS Practice Standard Code 590;

(2) When results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 parts per million of extractable phosphorus (reported as P) in the zero to six-inch sample for a particular land application field or if ordered by the commission in order to protect the quality of water in the state, then the operator may not apply any sewage sludge to the affected area unless the land application is implemented in accordance with a detailed nutrient utilization plan (NUP) that has been approved by the commission.

(3) A NUP is equivalent to the NRCS Nutrient Management Plan Practice Standard Code 590. The nutrient management plan, based on crop removal, must be developed and certified by one of the following individuals or entities:

- (A) an employee of the NRCS;
- (B) a nutrient management specialist certified by the NRCS;
- (C) the Texas State Soil and Water Conservation Board;
- (D) Texas Cooperative Extension;

(E) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas;

(F) a professional agronomist certified by the American Society of Agronomy;

(G) a certified professional soil scientist certified by the Soil Science Society of America; or

(H) a licensed Texas geoscientist-soil scientist, after approval by the executive director based on a determination by the executive director that another person or entity identified in this paragraph cannot develop the plan in a timely manner.

(4) After a NUP is implemented, the operator shall land apply in accordance with the NUP until soil phosphorus is reduced below 200 parts per million in the zero to six-inch sample. Thereafter, the operator shall implement the requirements of the nutrient management plan.

(5) The buffer zones must be maintained according to the applicable requirements specified in §312.44(c) of this title (relating to Management Practices).

§312.12. Registrations.

(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 Required Authorizations or Notifications), an applicant for a registration to land apply Class A sludge, water treatment sludge, and/or domestic septage 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 material to be land applied;

(B) a description of all processes generating the material to be land applied at the site;

(C) information about the site and the planned management of the material to be land applied, 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 material to be land applied 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 Class A sludge, water treatment sludge, and/or domestic septage 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, 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, as applicable:

(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 at the time the application is filed, and other reliable sources. The list of property owners must be provided in both hard copy and either in electronic format or on four sets of self-adhesive mailing labels; and

(iii) the source of the information;

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

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

(ii) soil samples that accurately show soil conditions in the application area(s) and that are 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 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 taken from each United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) soil type (soils with the same characterization or texture), unless an alternate method is used;

(v) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan also

included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

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

(i) separate samples 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) soil samples that accurately show soil conditions in the application area(s) and that are 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 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 taken from each USDA NRCS soil type (soils with the same characterization or texture), unless an alternate method is used;

(v) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan also

included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

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

(2) 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 must be submitted to the executive director in duplicate form.

(c) The executive director shall determine, after review of any application, 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 shall 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 that the executive director's decision is mailed to the applicant, notice of this decision must 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).

(e) For registered land application sites located in a major sole-source impairment zone, the registrant must comply with the provisions listed in §312.11(k) of this title (relating to Permits).

§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, Subchapters H - J of this title (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; and Public Notice of Water Quality Applications and Water Quality Management Plans), Chapter 50, Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director), and Chapter 55, Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or Contested Case Hearing).

(2) For disposal and incineration permit applications, notice must be provided to all owners of properties within 1/2 mile of the border of any portion of the tract of land where the permitted activities would occur. For beneficial use (excluding Class B sewage sludge), processing, and storage permit applications, notice must be provided 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.

(3) For Class B sewage sludge beneficial land use permit applications:

(A) notice must be provided under Chapter 39 of this title (relating to Public Notice) and under Texas Water Code, §5.552. The notice must also contain the anticipated date of the first land application of sludge to the proposed land application unit. An applicant for a new permit, permit amendment, or permit renewal under Texas Health and Safety Code, §361.121(c), shall notify by registered or certified mail each owner of land located within 1/4 mile of the proposed land application unit who lives on that land; and

(B) an owner of the land located within 1/4 mile of the proposed land application unit who lives on the land is considered an “affected person” for purposes of Texas Water Code, §5.115, and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment). Individuals who do not own land within 1/4 mile of the proposed land application site are not excluded from being considered “affected persons” under §55.203 of this title (relating to Determination of Affected Person).

(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. 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 or registrations for water treatment sludge.

(2) The Office of the Chief Clerk shall mail the 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 is to be located.

(3) The Office of the Chief Clerk shall mail the 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 must 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 notice must 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 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, where applicable. 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 in accordance with §312.12(c) of this title (relating to Registrations).

(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 Executive Director's Decision) to overturn the executive director's final approval or denial of an application.

**SUBCHAPTER B: LAND APPLICATION FOR BENEFICIAL USE AND STORAGE AT
BENEFICIAL USE SITES**

§312.44, §312.48

STATUTORY AUTHORITY

The amendments are adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §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 Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged

for the issuance of a permit, and that the commission adopt rules to require an applicant to submit certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The adopted amendments implement HB 2546.

§312.44. Management Practices.

(a) Land application of bulk sewage sludge must not cause or contribute to the harm of a threatened or endangered species of plant, fish, or wildlife or result in the destruction or adverse modification of the critical habitat of a threatened or endangered species.

(b) Bulk sewage sludge must not be applied to agricultural land, forest, a public contact site, or a reclamation site that is flooded, frozen, or snow-covered so that the bulk sewage sludge enters a wetland or other water in the state, except as provided in a permit issued under Chapter 305 of this title (relating to Consolidated Permits) or Clean Water Act, §404.

(c) When bulk sewage sludge that does not meet Class A pathogen requirements or domestic septage is applied to agricultural land, forest, or a reclamation site, buffer zones must be established for each application area as noted in this section unless otherwise specified by the commission.

(1) Surface water:

(A) 200-foot buffer zone, if the sludge is not incorporated; for land application sites located in a major sole-source impairment zone this buffer zone must maintain a vegetative cover;
or

(B) 33-foot vegetative buffer zone, if the sludge is incorporated.

(2) Other buffer zones:

(A) 150 feet, private water supply well;

(B) 500 feet, public water supply well, intake, spring or similar source, public water supply treatment plant, or public water supply elevated or ground storage tank;

(C) 200 feet, solution channel, sinkhole, or other conduit to groundwater;

(D) 750 feet, established school, institution, business, or occupied residential structure;

(E) 50 feet, public right-of-way and property boundaries; and

(F) 10 feet, irrigation conveyance canal.

(d) Any of the buffers established in subsection (c)(2)(D) and (E) of this section may be reduced or eliminated if an agreement to that effect is signed by the owners of the established school,

institution, business, occupied residential structure, or adjacent property and this documentation is provided to the executive director prior to issuance of a permit or registration. Reductions or elimination of buffer zones in an existing permit or registration by agreement of the affected landowner will be considered a minor amendment of the permit or registration.

(e) Bulk sewage sludge must be applied to agricultural land, forest, or a public contact site at a whole sludge application rate that is equal to or less than the agronomic rate for the agricultural land, forest, or public contact site on which the bulk sewage sludge is applied.

(f) Bulk sewage sludge must be applied to a reclamation site at a whole application rate that is equal to or less than the agronomic rate for the reclamation site on which the bulk sewage sludge is applied, unless otherwise specified by the commission. On a case-by-case basis, a whole sludge application rate may exceed the agronomic rate for a specific time period.

(g) Groundwater protection measures.

(1) A seasonal high groundwater table must be not less than three feet below the treatment zone for soils with moderate or slower permeability (less than two inches per hour).

(2) A seasonal high groundwater table must be not less than four feet below the treatment zone for soils with moderately rapid or rapid permeability (greater than two inches per hour and less than 20 inches per hour).

(3) Seasonal generally refers to a groundwater table that may be perched on a less permeable soil or geologic unit and fluctuates with seasonal climatic variation or that occurs in a soil or geologic unit as a variation in saturation due to seasonal climatic conditions and is identified as such in a published soil survey report or similar document.

(4) Application of sludge to land having soils with greater permeability and with higher groundwater tables will be considered on a case-by-case basis, after consideration of soil pH, metal loadings onto the soil, soil buffering capacity, or other protective measures to prevent groundwater contamination.

(h) Sludge must be applied by a method and under conditions that prevent runoff of sewage sludge beyond the active application area and protect the quality of the surface water and the soils in the unsaturated zone.

(1) Sludge must be applied uniformly over the surface of the land.

(2) Sludge may not be applied to areas where permeable surface soils are less than two feet thick. The executive director will consider sites with thinner permeable surface soils, on a case-by-case basis.

(3) Sewage sludge may not be applied during rainstorms or during periods in which surface soils are water-saturated.

(4) Sludge may not be applied to areas having topographical slopes in excess of 8.0%.

On a case-by-case basis, the executive director will consider sites with steeper slopes when runoff controls are proposed and utilized, incorporation of sewage sludge into the soil occurs, or for certain reclamation projects.

(5) Where runoff of sludge from the active application area is evident, the operator shall cease further sludge application until the condition is corrected.

(6) Sewage sludge may not be applied under provisions of this section on land within a designated floodway.

(i) Either a label must be affixed to the bag or other container in which sewage sludge is sold or given away for application to the land or an information sheet must be provided to the person who receives sewage sludge sold or given away in another container for application to the land. The label or information sheet must contain the following information:

(1) the name and address of the person who prepared the sewage sludge for sale or given away in a bag or other container for application to the land;

(2) a statement that prohibits the application of the sewage sludge to the land except in accordance with the instructions on the label or information sheet; and

(3) the annual whole sludge application rate for the sewage sludge that does not cause the annual metal loading rates in §312.43(b)(4) of this title (relating to Metal Limits) to be exceeded.

(j) Nuisance controls.

(1) A land application site location must be selected and the site operated in a manner to prevent public health nuisances.

(2) Sewage sludge debris must be prevented from blowing or running off site boundaries or into surface waters.

(3) If necessary or when significant nuisance conditions occur, the operator shall:

(A) minimize dust migration from the site and access roadways; and

(B) minimize objectionable odors through incorporation of sewage sludge into the soil or by taking some other type of corrective action.

(k) A permit or registration must specify the soil testing requirements for each application area.

(1) The testing frequency must take into account common agricultural methods of determining cover crop nutrient needs, soil pH, phytotoxicity, and concentrations of metals regulated by this chapter.

(2) No authorization may require soil testing of metals regulated by this chapter, at a frequency greater than once per five years or prior to submittal of a renewal application for a beneficial use site. Soil testing for metals regulated by this chapter may not be required for portions of the authorized site where sewage sludge has not been applied since the last soil metals testing was performed.

(3) Paragraph (2) of this subsection does not apply if the executive director becomes aware of circumstances warranting increased monitoring of metals regulated by this chapter, in order to address sites where metal loading into the soil is a threat to human health or environmental quality.

(l) A permit holder of a Class B sewage sludge site shall post a sign that is visible from a road or sidewalk that is adjacent to the premises on which the land application unit is located stating that a sewage sludge beneficial land application site is located on the premises.

(m) A permit holder of a Class B sewage sludge site may not accept sewage sludge, unless the sludge is transported to the land application unit in a covered container with the covering firmly secured at the front and back.

§312.48. Reporting.

Unless otherwise specified by the commission, sludge management facilities shall submit the following information to the Enforcement Division, the Wastewater Permitting Section of the Water Quality Division, and the appropriate regional office:

(1) annually by September 30 of each year:

(A) the information in §312.47 of this title (relating to Record Keeping) for the applicable requirements;

(B) the information in §312.47(a)(5)(A)(i) - (iv) of this title if:

(i) the sewage sludge does not meet the metal concentrations in §312.43(b)(3) of this title (relating to Metal Limits);

(ii) 90% or more of any of the cumulative metal loading rates in §312.43(b)(2) of this title is reached at a site; or

(iii) sewage sludge is applied to a site after 90% of any of the cumulative metal loading rates is reached at the site; and

(C) for the Class B sewage sludge beneficial land application permit holder:

(i) evidence that the permit holder is complying with the nutrient management plan developed by a certified nutrient management specialist in accordance with the United States Department of Agriculture Natural Resource Conservation Service Practice Standard Code 590;

(ii) a completed Annual Sludge Summary Report Form; and

(iii) proof of continuation of commercial liability insurance and environmental impairment insurance; and

(2) for the Class B sewage sludge beneficial land use permit holder, submit quarterly reports by the 15th day of the month following each quarter. Quarterly reports are due December 15th, March 15th, June 15th, and September 15th and must include:

(A) a Quarterly Sludge Summary Report form; and

(B) a computer-generated quarterly report containing:

(i) the source, quality, and quantity of sludge applied to the land application unit;

(ii) the location of the land application unit, either in terms of longitude and latitude or by physical address, including the county;

(iii) the dates of delivery of Class B sewage sludge;

(iv) the dates of application of Class B sewage sludge;

(v) the cumulative amount of metals applied to the land application unit through the application of Class B sewage sludge;

(vi) crops grown at the land application unit site; and

(vii) the suggested agronomic application rate for the Class B sewage sludge.

SUBCHAPTER D: PATHOGEN AND VECTOR ATTRACTION REDUCTION

§312.82

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §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 Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission adopt rules to require an applicant to submit

certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The adopted amendment implements HB 2546.

§312.82. Pathogen Reduction.

(a) Sewage sludge - Class A.

(1) Compliance requirements - Class A.

(A) For a sewage sludge to be classified as Class A with respect to pathogens, the requirements in subparagraphs (B) and (C) of this paragraph and the requirements of one of the alternatives listed in paragraph (2) of this subsection must be met.

(B) The requirements of the chosen alternative for pathogen reduction from paragraph (2) of this subsection must be met prior to or at the same time as the vector attraction reduction requirements, except the requirements in §312.83(b)(6) - (8) of this title (relating to Vector Attraction Reduction).

(C) Either the density of fecal coliform in the sewage sludge must be less than 1,000 Most Probable Number per gram of total solids (dry weight basis) or the density of Salmonella

(sp. bacteria) in the sewage sludge must be less than three Most Probable Number per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title (relating to Applicability).

(2) Compliance alternatives - Class A.

(A) Alternative 1. The temperature of the sewage sludge that is used or disposed of must be maintained at a specified value for a period of time.

(i) When the percent solids of the sewage sludge is 7.0% or higher, the temperature of the sewage sludge must be 50 degrees Celsius or higher; the time period must be 20 minutes or longer; and the temperature and time period must be determined using the equation in this clause, except when small particles of sewage sludge are heated by either warmed gases or an immiscible liquid.

Figure: 30 TAC §312.82(a)(2)(A)(i)

$$D > \frac{131,700,000}{10^{0.1400t}}$$

D = time in days.

t = temperature in degrees Celsius.

(ii) When the percent solids of the sewage sludge is 7.0% or higher and small particles of sewage sludge are heated by either warmed gases or an immiscible liquid, the temperature of the sewage sludge must be 50 degrees Celsius or higher, the time period must be 15 seconds or longer, and the temperature and time period must be determined using the equation in clause (i) of this subparagraph.

(iii) When the percent solids of the sewage sludge is less than 7.0% and the time period is at least 15 seconds, but less than 30 minutes, the temperature and time period must be determined using the equation in clause (i) of this subparagraph.

(iv) When the percent solids of the sewage sludge is less than 7.0%; the temperature of the sewage sludge is 50 degrees Celsius or higher; and the time period is 30 minutes or longer, the temperature and time period must be determined using the equation in this clause.

Figure: 30 TAC §312.82(a)(2)(iv)

$$D > \frac{50,070,000}{10^{0.1400t}}$$

D = time in days.

t = temperature in degrees Celsius.

(B) Alternative 2. The temperature and pH of the sewage sludge that is used or disposed of must be maintained at specific values for periods of time.

(i) The pH of the sewage sludge must be raised to above 12 and must remain above 12 for 72 hours.

(ii) The temperature of the sewage sludge must be above 52 degrees Celsius for 12 hours or longer during the period that the pH of the sewage sludge is above 12.

(iii) At the end of the 72-hour period during which the pH of the sewage sludge is above 12, the sewage sludge must be air dried to achieve a percent solids in the sewage sludge greater than 50%.

(C) Alternative 3. The sewage sludge that is used or disposed of must be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses until the next monitoring episode for the sewage sludge.

(ii) When the density of enteric viruses in the sewage sludge prior to pathogen treatment is equal to or greater than one Plaque-forming Unit per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to enteric viruses when the density of enteric viruses in the sewage sludge after pathogen treatment is less than one Plaque-forming Unit per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the enteric virus density requirement are documented.

(iii) After the enteric virus reduction in clause (ii) of this subparagraph is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to enteric viruses when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (ii) of this subparagraph.

(iv) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is less than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova until the next monitoring episode for the sewage sludge.

(v) When the density of viable helminth ova in the sewage sludge prior to pathogen treatment is equal to or greater than one per four grams of total solids (dry weight basis), the sewage sludge is Class A with respect to viable helminth ova when the density of viable helminth ova in the sewage sludge after pathogen treatment is less than one per four grams of total solids (dry weight basis) and when the values or ranges of values for the operating parameters for the pathogen treatment process that produces the sewage sludge that meets the viable helminth ova density requirement are documented.

(vi) After the viable helminth ova reduction in clause (v) of this subparagraph is demonstrated for the pathogen treatment process, the sewage sludge continues to be Class A with respect to viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the values or ranges of values documented in clause (v) of this subparagraph.

(D) Alternative 4. The sewage sludge that is used or disposed of must be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) The density of enteric viruses in the sewage sludge must be less than one Plaque-forming Unit per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title.

(ii) The density of viable helminth ova in the sewage sludge must be less than one per four grams of total solids (dry weight basis) at the time the sewage sludge is used or disposed of, at the time the sewage sludge is prepared for sale or given away in a bag or other container for application to the land, or at the time the sewage sludge or material derived from sewage sludge is prepared to meet the requirements in §312.41(b), (c), (e), or (f) of this title.

(E) Alternative 5 (Processes to Further Reduce Pathogens (PFRP)). Sewage sludge that is used or disposed of must be treated in one of the PFRP described in 40 Code of Federal Regulations (CFR) Part 503, Appendix B.

(F) Alternative 6 (PFRP Equivalent). Sewage sludge that is used or disposed of must be treated in a process that has been approved by the United States Environmental Protection Agency (EPA) as being equivalent to those in subparagraph (E) of this paragraph.

(b) Sewage sludge - Class B.

(1) Compliance requirements - Class B.

(A) For a sewage sludge to be classified as Class B with respect to pathogens, the requirements in subparagraphs (B) and (C) of this paragraph must be met. As an alternative for a sewage sludge to be classified as Class B, the requirements of subparagraph (B) of this paragraph and paragraph (2) of this subsection must be met.

(B) The site restrictions in paragraph (3) of this subsection must be met when sewage sludge that is classified as Class B with respect to pathogens is applied to the land for beneficial use.

(C) A minimum of seven representative samples of the sewage sludge must be collected within 48 hours of the time that the sewage sludge is used or disposed of during each monitoring episode for the sewage sludge. The geometric mean of the density of fecal coliform for the samples collected must be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony-forming Units per gram of total solids (dry weight basis).

(2) Processes to Significantly Reduce Pathogens (PSRP) compliance alternatives - Class B. Sewage sludge that is used or disposed of must be treated in one of the PSRP described in 40 CFR Part 503, Appendix B, or must be treated by an equivalent process approved by the EPA, so long as all of the following requirements are met by the generator of the sewage sludge.

(A) Prior to use or disposal, all the sewage sludge must have been generated from a single location, except as provided in subparagraph (F) of this paragraph.

(B) An independent Texas registered professional engineer must make a certification to the generator of a sewage sludge that the wastewater treatment facility generating the sewage sludge is designed to achieve one of the PSRP at the permitted design loading of the facility. The certification need only be repeated if the design loading of the facility is increased. The certification must include a statement indicating that the design meets all the applicable standards specified in 40 CFR Part 503, Appendix B.

(C) Prior to any off-site transportation or on-site use or disposal of any sewage sludge generated at a wastewater treatment facility, the chief certified operator of the wastewater treatment facility or other responsible official who manages the PSRP at the wastewater treatment facility for the permittee, shall certify that the sewage sludge underwent at least the minimum operational requirements necessary in order to meet one of the PSRP. The acceptable processes and the minimum operational and recordkeeping requirements must be in accordance with established EPA final guidance.

(D) All certification records and operational records describing how the requirements of this paragraph were met must be kept by the generator for a minimum of three years and be available for inspection by commission staff for review.

(E) In lieu of a generator obtaining a certification as specified in subparagraph (B) of this paragraph, the executive director will accept from the EPA a finding of equivalency to the defined PSRP.

(F) If the sewage sludge is generated from a mixture of sources, resulting from a person who prepares sewage sludge from more than one wastewater treatment facility, the resulting derived product must meet one of the PSRP, and meet the certification, operation, and recordkeeping requirements of this paragraph.

(3) Site restrictions.

(A) Food crops with harvested parts totally above the land surface that touch the sewage sludge/soil mixture must not be harvested from the land for at least 14 months after the application of sewage sludge.

(B) Food crops with harvested parts below the surface of the land must not be harvested for at least 20 months after application of sewage sludge when the sewage sludge remains on the land surface for four months or longer prior to incorporation into the soil.

(C) Food crops with harvested parts below the surface of the land must not be harvested for at least 38 months after application of sewage sludge when the sewage sludge remains on the land surface for less than four months prior to the incorporation into the soil.

(D) Food crops, feed crops, and fiber crops must not be harvested for at least 30 days after application of sewage sludge.

(E) Animals must not be allowed to graze on the land for at least 30 days after application of sewage sludge.

(F) Turf grown on land where sewage sludge is applied may not be harvested for at least one year after application of sewage sludge when the harvested turf is placed on either land with a high potential for public exposure or a lawn.

(G) Public access to land with a high potential for public exposure must be restricted for at least one year after application of sewage sludge.

(H) Public access to land with a low potential for public exposure must be restricted for at least 30 days after application of the sewage sludge.

(c) Domestic septage.

(1) The site restrictions in subsection (b)(3) of this section must be met if domestic septage is applied to agricultural land, forest, or a reclamation site.

(2) The pH of domestic septage applied to agricultural land, forest, or a reclamation site must be raised to 12 or higher by alkali addition and, without the addition of more alkali, must remain at 12 or higher for a period of 30 minutes.

SUBCHAPTER F: DISPOSAL OF WATER TREATMENT SLUDGE

§312.122

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §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 Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission adopt rules to require an applicant to submit

certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The adopted amendment implements HB 2546.

§312.122. Registrations and Permits.

(a) A permit shall be required before any disposal of water treatment sludge in a landfill. The requirements for applications, permits, permit conditions, and actions by the commission shall be in accordance with Chapter 305 of this title (relating to Consolidated Permits). Applications for permits will be processed in accordance with Chapter 281 of this title (relating to Applications Processing).

(b) Any person who disposes of water treatment sludge in a land application unit, surface impoundment, or waste pile in accordance with §312.121 of this title (relating to Purpose, Scope, and Standards) shall apply for registration on a form approved by the commission. A completed application must be submitted to the commission's Permitting Section of the Water Quality Division. Before issuing a registration, the executive director may review the application to determine whether the proposed activity meets the requirements of 40 Code of Federal Regulations Part 257.

SUBCHAPTER G: TRANSPORTERS AND TEMPORARY STORAGE PROVISIONS

§312.145

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to conservation of natural resources and protection of the environment; Texas Water Code, §5.103 and §5.105, which establish the commission's general authority to adopt rules; Texas Water Code, §26.121, which provides that no person may discharge sewage, municipal waste, recreational waste, agricultural waste, industrial waste, or other waste into or adjacent to any water in the state except as authorized by the commission; Texas Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste; Texas Health and Safety Code, §361.013, which provides the commission the authority to adopt rules and establish fees for the transportation and disposal of solid waste; Texas Health and Safety Code, §361.022, which provides the state's public policy for preferred methods for generating, treating, storing, and disposing of municipal sludge as reuse; Texas Health and Safety Code, §361.024, which provides the commission with authority to adopt rules consistent with the chapter and establish minimum standards of operation for the management and control of solid waste; Texas Health and Safety Code, §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 Texas Health and Safety Code, §361.121, as amended by HB 2546, which provides that a permit is required for the land application of Class B sewage sludge, that a fee shall be charged for the issuance of a permit, and that the commission adopt rules to require an applicant to submit

certain information with a permit application, including information relating to commercial liability insurance and environmental impairment insurance.

The adopted amendment implements HB 2546.

§312.145. Transporters - Recordkeeping.

(a) Trip tickets. Persons who collect and transport waste subject to control under this subchapter shall maintain a record of each individual collection and deposit. Such records must be in the form of a trip ticket. Similar documentation may be used with written approval by the executive director. The trip ticket must include:

(1) name, address, telephone number, and commission registration number of transporter;

(2) name, signature, address, and telephone number of the person who generated the waste and the date collected;

(3) type and amount(s) of waste collected or transported;

(4) name and signature(s) of responsible person(s) collecting, transporting, and depositing the waste;

(5) date and place where the waste was deposited;

(6) identification (permit or site registration number, location, and operator) of the facility where the waste was deposited;

(7) name and signature of facility on-site representative acknowledging receipt of the waste and the amount of waste received; and

(8) the volume of the grease and grit trap or the septic tank.

(b) Maintenance of records and reporting.

(1) Trip tickets. Trip tickets must be divided into five parts and records of trip tickets must be maintained as follows.

(A) One part of the trip ticket must have the generator and transporter information completed and be given to the generator at the time of waste pickup.

(B) The remaining four parts of the trip ticket must have all required information completely filled out and signed by the appropriate party before distribution of the trip ticket.

(C) One part of the trip ticket must go to the receiving facility.

(D) One part of the trip ticket must go to the transporter, who shall retain a copy of all trip tickets showing the collection and disposition of waste.

(E) One copy of the trip ticket must be returned by the transporter to the person who generated the waste within 15 days after the waste is received at the disposal or processing facility.

(F) One part of the trip ticket must go to the local authority, if needed.

(2) Record retention. Copies of trip tickets must be retained for five years and be readily available for review by commission staff or be submitted to the executive director upon request.

(3) Rail or barge transport. Persons who transport waste via rail or barge may use an alternate recordkeeping system, if approved by the executive director.

(4) Reporting. By July 1, transporters must submit to the executive director an annual summary of their activities for the previous period of June 1 through May 31, showing the following:

(A) amounts and types of waste collected;

(B) disposition of such wastes; and

(C) amounts and types of waste delivered to each facility.

(c) Discrepancies. A facility that receives waste must note any significant discrepancies on each copy of the trip ticket.

(1) Trip ticket discrepancies are differences between the quantity or type of waste designated on the trip ticket, and the quantity or type of waste a facility actually received. Significant discrepancies in type are obvious differences that can be discovered by inspection or waste analysis. Significant discrepancies in quantity are:

(A) for bulk weight, variations greater than 10% in weight; and

(B) for liquid waste, any variation greater than 15% in gallons.

(2) Upon discovering a significant discrepancy, the transporter must attempt to reconcile the discrepancy with the waste generator or owner or operator of the receiving facility (e.g., with telephone conversations). If the discrepancy is not resolved within 15 days after delivering the waste, the transporter must immediately submit to the executive director a letter describing the discrepancy and attempts to reconcile it, and a copy of the trip ticket.

(d) Notification. A facility that receives waste from a transporter that cannot produce a registration acknowledgment under §312.142(c) of this title (relating to Transporter Registration) must notify the appropriate regional office of the commission within three days of the waste receipt of the transporter's failure to produce a current registration authorization.

(e) Local ordinances. Where local ordinances require controls and records substantially equivalent to or more stringent than the requirements of subsection (a) of this section, transporters may use such controls and records to satisfy the commission's requirement under this section.