

The Texas Commission on Environmental Quality (TCEQ or commission) proposes amendments to §§312.4, 312.8 - 312.13, 312.44, 312.48, 312.82, 312.122, and 312.145.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED 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 proposed throughout the sections to bring the existing rule language into agreement with guidance provided in the *Texas Legislative Council Drafting Manual*, October 2002 and change “TNRCC” to “TCEQ.”

Section 312.4, Requirements for Sewage Sludge Permit, Registration, or Notification, is proposed 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 will 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 is issued for the site. The clause "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 repealed 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 proposes to delete subsection (d) pertaining to term limits for registrations and permits and move the unchanged language to §310.10(a), and reletter current subsection (e) as subsection (d). The commission proposes to delete subsection (f) pertaining to Class B sewage sludge land application permit application fees and move to §312.9.

Section 312.8, General Definitions, is proposed to add, delete, and renumber definitions as appropriate. 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.” A new paragraph (78) has been added to define “Sole-source surface drinking water supply.”

Section 312.9, Sludge Fee Program, is proposed to change 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) and add a new subsection (g)(1) that 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 312.10, Permits and Registration Applications Processing, is proposed to reword 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 proposes to create 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, is proposed to amend subsection (a) by adding the unchanged existing language in subsection (d)(5), which is proposed to be deleted. Subsection (c) is proposed to delete the existing language and restructure the subsection for clarity and readability. 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 per 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 phosphorus levels fall below the critical 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 312.12, Registration of Land Application Activities, is proposed to amend the title of the section to "Registrations." Subsection (b) updates the name of a subsection 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) is proposed to delete 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(l) are also applicable to registered land application sites.

Section 312.13, Actions and Notice, is proposed to amend subsection (b)(2) to delete redundant citations, and delete the outdated requirement of notice to landowners adjacent to any proposed Class B sewage sludge land application site. New subsection (b)(3) lists the actions and 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 considered an “affected person.”

Amendments to subsection (c) correct citations, names, remove inconsistencies, and update the rules,

including removal of the 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, is proposed to improve 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) is proposed to add 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) use 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, is proposed to update names and make 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 312.82, Pathogen Reduction, is proposed to make 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 federal regulations. 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 312.122, Registrations and Permits, is proposed to replace TNRCC with commission and Watershed Management Division with Water Quality Division.

Section 312.145, Transporters-Recordkeeping, is proposed to modify 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.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Grants Management Section, determined that, for the first five-year period that the proposed rules are in effect, costs are anticipated for the agency and for other units of local government to implement the proposed amendments, though these costs are not anticipated to be significant. However, for persons who land apply Class B sewage sludge, costs to comply with the proposed requirements for commercial liability and environmental impairment insurance may be significant, depending upon their financial ability to pay.

The proposed amendments implement requirements of HB 2546, which provided new requirements for Class B sludge permit applications, Class B sludge permit holders, and the commission.

Some of the more significant aspects of the rulemaking include the following: any applicant filing for a permit, permit amendment, or permit renewal would be required to send notice of intent to obtain a permit by registered or certified mail to all land owners living within 1/4 mile of the proposed sludge

land application unit; land owners living within 1/4 mile of the proposed sludge land application unit would be “affected persons” and as such, may request a contested case hearing without having to demonstrate how they are affected by the proposed permit; applicants would be required to submit proof of commercial liability insurance and environmental impairment insurance, unless they are political subdivisions; all permit applicants would be required to submit a certified NMP with the permit application, and on an annual basis, demonstrate compliance with the plan; permit holders would be required to submit a “computer-generated” quarterly report to the commission containing information regarding the source, quality, and quantity of sludge applied to the land; the commission would be required to create and operate a tracking system that would allow the permit holder to submit quarterly reports in accordance with HB 2546; permit holders would be required to post a sign on the property indicating that an active sludge application site is located on the premises; permit holders would be prohibited from accepting Class B sewage sludge that is not transported in covered containers with the covering firmly secured at the front and back; and any sites in counties bordering the Gulf of Mexico that are located within 500 feet of any water well or surface water are prohibited from land application of Class B sludge.

There are 82 sites currently permitted to apply Class B sludge that would be subject to the proposed rules. Twenty-four of these sites are owned or operated by units of local government. In addition, approximately 26 domestic wastewater treatment plants that apply Class B sludge would also be subject to the new requirements when they renew their municipal wastewater treatment plant permits. One of the wastewater treatment plants is privately owned and the rest are owned by municipalities.

Units of local government with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports in addition to annual reports; additional recordkeeping and notification requirements; posting signs on the site; and NMPs developed by certified nutrient management specialists. In accordance with HB 2546, units of political subdivisions are exempt from the commercial liability and environmental insurance requirements. The proposed rules also reduce fees for minor permit amendments and permit transfers, but this change is expected to have minimal impact because the change merely conforms the rules to current agency practice. One-time costs for NMPs are estimated to be \$5,000 for each plan, but could be more or less depending upon site characteristics and circumstances. Agency staff are not able to estimate additional costs for the new recordkeeping, reporting, and notification requirements though, in general, these costs are not expected to be significant. Facilities will have to report on a quarterly basis in addition to annually, and they will have to provide computer-generated reports. A sign posted on the disposal site may cost up to \$1,000.

If local governments own or operate sites in a major sole-source impairment zone, there could be additional costs to comply with the proposed phosphorus limits and for creating and maintaining a 200-foot vegetative buffer from surface waters. Additional expenses associated with the creation and maintenance of a vegetative buffer zone are not expected to be significant as the buffer zone may be as simple as using existing or newly established grassy areas. If soil phosphorus levels are above 200 parts per million, a NUP prepared by a certified nutrient management specialist must be implemented. NUPs are estimated to cost approximately the same amount as NMPs, about \$5,000 depending upon the site characteristics and circumstances.

HB 2546 requires the commission to develop and operate a sludge tracking system that will allow permit holders to electronically report a variety of data including delivery dates, dates of application, as well as the source, quality, and quantity of sludge delivered to the site. The agency will have to enter this data into a new Web-based database, ensure the data is complete and correct, and update its Web site capabilities in order to post the statutorily required information. The agency will also need to update the permit application, instructions, and permit language to include necessary changes resulting from the proposed rule changes. These new requirements may result in additional estimated costs of between \$80,000 to \$90,000 per year for the agency, though in general these costs are not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that for each year of the first five years that the proposed rules are in effect, the public benefit anticipated will be greater protection for the water resources of the state and compliance with state law.

Fiscal implications are anticipated for owners and operators that land apply Class B sewage sludge. Of the 82 current sites with Class B permits, 58 of the sites (approximately 71%) are privately owned or operated.

Businesses or individuals with Class B sewage sludge permits or municipal wastewater treatment plant permits may realize an increase in expenditures for: preparing quarterly reports; additional recordkeeping and notification requirements; posting signs at the site; and for NMPs. The most

significant costs are expected to result from requirements in HB 2546 to have two distinct insurance policies, one for commercial liability and the other for environmental impairment. Each of the insurance policies must be in amounts of not less than \$3 million. It is estimated that annual premiums for both policies may range between \$17,000 and \$25,000. Additional recordkeeping, reporting, and notification requirements are not expected to result in significant costs. Costs for NMPs are estimated to cost \$5,000 each, but could be more or less depending upon site characteristics and circumstances.

For permit holders located in a major sole-source impairment zone, there may be additional expenses associated with the creation and maintenance of a vegetative buffer zone and for the development and implementation of a NUP. NUPs are estimated to cost approximately the same amount as NMPs, about \$5,000 depending upon the site characteristics and circumstances. Costs to construct a 200-foot vegetative buffer are not expected to be significant.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

Adverse fiscal implications are anticipated for small or micro-businesses involved in the land application of Class B sewage sludge. It is not known how many of the 58 currently permitted privately owned Class B sludge sites are small or micro-businesses, but for those that are, additional costs may be expected for preparing quarterly reports, additional recordkeeping requirements, notification requirements, insurance requirements, and paying for NMPs. The largest cost, the annual premiums for the required commercial liability and environmental impairment insurance policies, may range between \$17,000 and \$25,000.

The following is an analysis of the cost per employee for any small or micro-businesses affected by the proposed insurance requirements and who must pay estimated annual premiums of between \$17,000 and \$25,000. Small and micro-businesses are defined as having fewer than 100 or 20 employees, respectively. Owners or operators of businesses that apply Class B sludge to land sites with 100 or fewer employees could incur additional costs of between at least \$170 to \$250 per employee each year. A micro-business with 20 or less employees would incur estimated additional costs of between at least \$850 and \$1,250 per employee. The projected costs are the same for small businesses as for larger businesses.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the proposed 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 proposed 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 proposed 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 proposed rules do not meet the definition of a major environmental rule.

Furthermore, even if the proposed rules did meet the definition of a major environmental rule, the proposed 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 proposed rules do not meet any of these requirements. First, there are no applicable federal standards that these rules would address. Second, the proposed 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 proposed rules because none relates to this subject matter area. Fourth, the commission proposes these rules under the rulemaking direction of HB 2546 and not solely under the commission's general powers.

Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

TAKINGS IMPACT ASSESSMENT

The commission evaluated these proposed rules and performed an assessment of whether the proposed rules constitute a taking under Texas Government Code, Chapter 2007. The specific purpose of the proposed 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 proposed 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 proposed rules would be neither a statutory nor a constitutional taking of private real property because the proposed rules do not affect real property.

In particular, there are no burdens imposed on private real property, and the proposed 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 proposed rules will not constitute a taking under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found the proposal 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.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the SUBMITTAL OF COMMENTS section of this preamble.

ANNOUNCEMENT OF HEARING

The commission will hold a public hearing on this proposal in Austin on May 3, 2005, at 10:00 a.m. in Building F, Room 2210, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes before the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer, Office of Legal Services, at (512) 239-5017. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Joyce Spencer, Texas Register Team, Office of Legal Services, Texas Commission on Environmental Quality, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-055-312-WT.

Comments must be received by 5:00 p.m., May 9, 2005. For further information or questions concerning this proposal, please contact Beth Fraser, Water Quality Division, at (512) 239-2526.

SUBCHAPTER A: GENERAL PROVISIONS

§§312.4, 312.8 - 312.13

STATUTORY AUTHORITY

The amendments are proposed 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 shall 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 proposed amendments implement HB 2546.

§312.4. Required Authorizations or Notifications [Requirements for Sewage Sludge Permit, Registration, or Notification].

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

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

(2) (No change.)

(3) Site permit information on file with the commission must [shall] 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) (No change.)

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

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

(A) - (B) (No change.)

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

(i) - (iii) (No change.)

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

(3) (No change.)

(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 [shall] include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report must [shall] also include a description of the annual amounts of sewage sludge provided to each initial receiver from the in-state generator and for persons who convey out-of-state sewage sludge into Texas, the amounts provided from this person directly to any initial receivers. This report can be combined with the annual report(s) required under §312.48 of this title (relating to Reporting), §312.68 of this title (relating to Reporting), or §312.123 of this title (relating to Annual Report).

(c) Registration of land application sites.

(1) 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.

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

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

[(3) Upon the effective date of these rules:]

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

[(B) only permit applications will be accepted; and]

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

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

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

[(B) requested by the executive director.]

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

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

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

[(1) Any person who applies for a permit, permit renewal, permit modification, permit amendment, or permit transfer shall pay a permit application fee. The fees in this subsection supercede the fees in §305.53 of this title (relating to Application Fee). The commission shall not consider an application for final decision until such time as the permit application fee is paid. All permit application fees must be made payable to the Texas Commission on Environmental Quality and paid at the time the application for a permit is submitted.]

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

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

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

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

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

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

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

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

§312.8. 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 rainfall event with a 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 [therefrom].

(2) (No change.)

(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) (No change.)

(5) **Agricultural management unit [Management Unit (AMU)]** - 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) (No change.)

(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) - (9) (No change.)

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

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

(14) [(13)] **Beneficial use** - Placement of sewage sludge onto land in a manner that [which] 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 [which] 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) [(14)] **Bulk sewage sludge** - Sewage sludge that is not sold or given away in a bag or other container for application to the land.

[(15) **CFR** - Code of Federal Regulations.]

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

(19) [(18)] **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) [(19)] **Cover** - Soil or other material used to cover sewage sludge placed on an active sludge unit.

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

(22) [(21)] **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) [(22)] **Density of microorganisms** - The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

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

(25) [(24)] **Disposal** - The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal does [shall] 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) [(25)] **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) [(26)] **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) [(27)] **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) [(28)] **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) [(29)] **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) [(30)] **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) [(31)] **Feed crops** - Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

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

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

(35) [(34)] **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) [(35)] **Food crops** - Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

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

(38) [(37)] **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) [(38)] **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) [(39)] **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) [(40)] **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) [(41)] **Industrial wastewater** - Wastewater generated in a commercial or industrial process.

(45) [(42)] **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) [(43)] **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) [(44)] **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) [(45)] **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) [(46)] **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) [(47)] **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) [(48)] **Liner** - Soil or synthetic material that has a hydraulic conductivity of 1×10^{-7} centimeters per second or less. Soil liners must [shall] 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 [shall] be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(52) [(49)] **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 surface 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 the concerns regarding pathogens and phosphorus, and for which the commission at some time prepared and submitted a total maximum daily load standard.

(54) [(50)] **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) [(51)] **Monofill** - A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(56) [(52)] **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) [(53)] **Off-site** - Property that [which] cannot be characterized as "on-site."

(58) [(54)] **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 [shall] be by crossing the right-of-way or the right-of-way must [shall] be under the control of the person.

~~(59)~~ [(55)] **Operator** - The person responsible for the overall operation of a facility or beneficial use site.

~~(60)~~ [(56)] **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)~~ [(57)] **Owner** - The person who owns a facility or part of a facility.

~~(62)~~ [(58)] **Pasture** - Land that [on which] animals feed directly on for feed crops such as legumes, grasses, grain stubble, forbs, or stover.

~~(63)~~ [(59)] **Pathogenic organisms** - Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

~~(64)~~ [(60)] **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) [(61)] **Place sewage sludge or sewage sludge placed** - Disposal of sewage sludge on a surface disposal site.

(66) [(62)] **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) [(63)] **Process or processing** - For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(68) [(64)] **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) [(65)] **Range land** - Open land with indigenous vegetation.

(70) [(66)] **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) [(67)] **Runoff** - Rainwater, leachate, or other liquid that drains overland on any part of a land surface and runs off of the land surface.

(72) [(68)] **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) [(69)] **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) [(70)] **Sewage sludge debris** - Solid material such as rubber, plastic, glass, or other trash that [which] 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) [(71)] **Sludge lagoon** - An existing surface impoundment located on site [on-site] at a wastewater treatment plant for the storage of sewage sludge. Any other type impoundment must [shall] be considered an active sludge unit, as defined in this section.

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

(77) [(73)] **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) [(74)] **Source separated yard waste** - For purposes of this chapter, shall have the same meaning [definition] as found in Chapter 332 of this title (relating to Composting).

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

(81) [(76)] **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) [(77)] **Store or storage** - The placement of sewage sludge on land for longer than seven days.

(83) [(78)] **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) [(79)] **Three hundred-sixty-five day period** - A running total that [which] covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(85) [(80)] **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) [(81)] **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) [(82)] **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) [(83)] **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) [(84)] **Unstabilized solids** - Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(90) [(85)] **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 [on which] the soils are subject to mass movement.

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

(92) [(87)] **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) [(88)] **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) [(89)] **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, [shall] 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 [pursuant to] the commission's authority in [the] Texas Health and Safety Code, Chapter 361, or a permit issued under [pursuant to] the commission's authority in [the] 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, transported₁ or disposed of in the state; [,] tracks the amount of processing, transporting₁ and disposal capacity and reserve capacity₂ [,] and enables equitable assessment and collection of fees.

(3) (No change.)

(b) Except as provided in subsection (f) of this section, the amount of the annual fee that [which] is assessed is determined by weight of solids disposed of and reported to the commission as of September 30 [1], of each year. Failure to report the disposal of sewage sludge or water treatment

sludge does not exempt a registrant or permittee [permitted] from this fee. The fees are [shall be] as follows.

(1) (No change.)

(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 [shall be] \$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 [the] October 1, 1995, the fee is [shall be] \$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, 1995₂ or thereafter, the fee is [shall be] \$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 [shall be] \$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 [And] Standards for Sludge Incineration),₂ the fee is [shall be] \$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 in Subchapter G of this chapter (relating to Transporters and Temporary Storage Provisions). The amount of the annual fee must [shall] 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 [shall be] as follows.

(1) For a total annual volume transported of 10,000 gallons (50 cubic yards) or less,₂ the fee is \$100.

(2) - (3) (No change.)

(4) For a total annual volume transported of greater than 200,000 gallons (1,000 cubic yards),₂ 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 [shall] be paid[,] by the registrant or permittee on or before the due date specified in the invoice [after being billed by the executive director, prior to October 1, of] each year. Fees assessed in subsection (c) of this section must [shall] be paid by the registrant after billing by the executive director, prior to September 1, of each year. Fees must [shall] be paid by check, certified check, or money order payable to the Texas Commission on Environmental Quality [Texas Natural Resource Conservation Commission (TNRCC)]. 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 [payment] 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 [source separated] yard waste at a composting facility, including a composting facility located at a permitted landfill site. This subsection does not apply if the sludge [it] 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) (No change.)

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

(c) Upon receipt of an application for a permit or registration, excluding [not to include] 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, [statement of the receipt of the application and declaration of administrative completeness] which is suitable for publishing or mailing, and forward that notice [statement] to the Office of the Chief Clerk [chief clerk]. The Office of the Chief Clerk [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 [notice of receipt of an application for permit or registration and

declaration of administrative completeness shall] contain the information required by [in] 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 [Public Notice]), Chapter 50, Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director [Action on Applications and Other Authorizations]), Chapter 55, Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or [and] Contested Case Hearing [Hearings; Public Comment]), 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 [Consolidated Permits]) for applications for sewage sludge land application, processing, disposal, storage, or incineration permits.

(f) All permit applications [Any person who is required to obtain a permit, or who requests an amendment, modification, or renewal of a permit] for sewage sludge land application, processing, disposal, storage, or incineration are [is] subject to the application processing procedures and requirements [found] in §§281.18 - 281.24 of this title (relating to Applications Returned; Technical

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

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

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

(j) (No change.)

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

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

(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 at the time the application is filed, or other reliable sources, application 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.

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

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

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

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

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

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

[(i) in electronic format; or]

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

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

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

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

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

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

[(i) in electronic format; or]

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

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

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

(d) A permit application for land application of [An applicant for a permit to land apply] Class B sewage sludge must also include [provide] the following information:

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

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

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

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

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

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

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

(E) [(F)] 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 [must also be] included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS [Natural Resource Conservation Service] soil type in each area sampled;

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

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

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

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

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

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

(E) [(F)] 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 [must] also [be] included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

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

(5) 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), except political subdivisions; 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.

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

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

(f) [(e)] Any person who is issued a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the permit characteristics and standards set forth in §305.122 of this title (relating to Characteristics of Permits), §305.123 of this title (relating to Reservation in Granting Permit), §305.124 of this title (relating to Acceptance of Permit, Effect), §305.125 of this title (relating to Standard Permit Conditions), §305.126(d) of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits), §305.127 of this title (relating to Conditions to be Determined for Individual Permits), §305.128 of this title (relating to Signatories to Reports), and §305.129 of this title (relating to Variance Procedures).

(g) [(f)] If any provision of a permit is violated during its term, the permit holder is required to report to the executive director the noncompliance in accordance with Texas Health and Safety Code, §361.121(d)(5) and §305.125(9) of this title. Each permit for the land application of sewage sludge must contain a provision requiring such reporting. Report of such information must [shall] be provided orally or by facsimile transmission (fax) to the appropriate regional office [Regional Office] within 24 hours of the permit holder becoming aware of the noncompliance. A written submission of such information must [shall] also be provided by the permit holder to the regional office [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) [(g)] Each sewage sludge land application permit must include a reference to the maximum quantity of sewage sludge that may be land applied under the permit.

(i) [(h)] Any permittee who requests a new permit or an amendment, modification, or renewal of a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, denials, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendment), §305.63 of this title (relating to Renewal), §305.64 of this title (related to Transfer of Permits), §305.65 of this title (relating to Renewal [Corrections of Permits]), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this

title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension). [The permittee shall have the continuing obligation to provide immediate written notice to the executive director of any changes to a permit or to information on soil or subsurface conditions at the site, and to provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods. Information submitted under this subsection shall be in quadruplicate form.]

(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 shall be 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 - 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 the critical phosphorus level. 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 [Registration of Land Application Activities].

(a) (No change.)

(b) Except as provided in §312.4(b) of this title (relating to Required Authorizations or Notifications [Requirements for Sewage Sludge Permit, Registration, or Notification]), an applicant for a registration to land apply Class A sludge, water treatment sludge, and/or domestic septage [and

§312.11 of this title (relating to Permits), any person who intends to land apply sewage sludge for beneficial use] shall:

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

(A) a description and composition of the material to be land applied [sewage sludge];

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

(C) information about the site and the planned management of the material to be land applied [sewage sludge], including the name, address, and telephone number of any landowner or operator at the site and the following information:

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

(ii) (No change.)

(iii) a listing of the types of material to be land applied [sewage sludge] managed in each unit or tract;

(iv) a detailed description of the beneficial use occurring at each unit or tract of land where application of Class A sludge, water treatment sludge, and/or domestic septage [sewage sludge] is proposed, including proposed waste management and crop production methods; and

(v) (No change.)

(D) (No change.)

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

(F) - (G) (No change.)

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

(i) (No change.)

(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; [and]

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

[(I) in electronic format; or]

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

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

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

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

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

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

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

(v) [(vi)] 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 [must] also [be] included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS [Natural Resource Conservation Service] soil type in each area sampled;

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

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

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

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

(iv) a separate composite sample [must be] taken from each USDA NRCS [Natural Resource Conservation Service] soil type (soils with the same characterization or texture)₂ unless an alternate method is used;

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

(v) [(vi)] 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 [must] also [be] included in the application, which sufficiently establishes background soil conditions

through proportionate sampling of each USDA Natural Resource Conservation Service soil type in each area sampled;

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

(2) [have the continuing obligation to] immediately provide written notice to the executive director of any changes, requests for an amendment, modification, or renewal of a registration, or any additional information concerning changes in land ownership, changes in site control, or operator, changes in waste composition, changes in the source of sewage sludge, or waste management methods, and information regarding soils and subsurface conditions where the operation is to be located. Any information provided under this paragraph must [shall] be submitted to the executive director in duplicate form.

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

regarding the application. The written determination on any application, including any authorization granted, shall be mailed to the applicant upon the decision of the executive director.

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

(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(l) of this title (relating to Permits).

§312.13. Actions and Notice.

(a) (No change.)

(b) Permit actions.

(1) All permit applications are subject to the standards and requirements as set forth in Chapter 39 [of this title], Subchapters H - J 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 [Public Notice]), Chapter 50 [of this title], Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director [Action on Applications and Other Authorizations]), and Chapter 55 [of this

title], Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or [and] Contested Case Hearing [Hearings; Public Notice]).

(2) For disposal and incineration permit applications, notice must [shall] be provided [pursuant to Chapter 39 of this title] to all owners of properties within 1/2 [one-half] 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 [shall] be provided [pursuant to Chapter 39 of this title] to all owners of properties adjacent to any portion of the tract of land where the permitted activities will occur. The tract of land includes all contiguous properties under the ownership or control of the applicant.

(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).

(c) Registration actions.

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

(2) The Office of the Chief Clerk [chief clerk of the commission] 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 [for land application of sewage sludge (including domestic septage)] is to be located.

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

(5) Any application for a registration [to beneficially use sewage sludge (including domestic septage)] is subject to the standards and requirements for actions concerning amendments, modifications, transfers, and renewals of registrations, as set forth in Chapter 50, Subchapter G of this title.

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

(e) Motion to overturn. The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn under §50.139 of this title (relating to Motion to Overturn

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 proposed 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 shall 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 proposed amendments implement HB 2546.

§312.44. Management Practices.

(a) Land application of bulk [Bulk] sewage sludge must [shall] 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 [after application to agricultural land, forest, a public contact site, or a reclamation site].

(b) Bulk sewage sludge must [shall] 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 waters in the state, except as provided in a permit issued under [pursuant to] Chapter 305 of this title (relating to Consolidated Permits) or Clean Water Act, §404 [of the Clean Water Act ("CWA")].

(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.

[(c) Distance to Surface Waters.]

[(1) Unless the sewage sludge is incorporated into the soil within 48 hours of application and a vegetated's cover is established between the application area and all adjacent surface waters, bulk sewage sludge not meeting Class A pathogen requirements and applied to agricultural land, forest, or a reclamation site shall maintain a buffer zone of at least 200 feet from surface waters.]

[(2) In cases where sludge is both incorporated into the soil within 48 hours of application and a vegetated's cover is established between the application area and all adjacent surface waters, bulk sewage sludge not meeting Class A pathogen requirements and applied to agricultural land, forest, or a reclamation site shall maintain a buffer zone of at least 33 feet from surface waters.]

[(d) When bulk sewage sludge not meeting Class A pathogen requirements is applied to agricultural land, forest, or a reclamation site, the following buffer zones shall be established for each application area, unless otherwise specified by the commission:]

[(1) private water supply well, 150 feet;]

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

[(3) solution channel, sinkhole, or other conduit to groundwater, 200 feet;]

[(4) established school, institution, business, or occupied residential structure, 750 feet;]

[(5) public right of way, 50 feet;]

[(6) irrigation conveyance canal, 10 feet;]

[(7) property boundary, 50 feet;]

(d) [(e)] Any of the buffers established in subsection (c)(2)(D) and (E) [(d)(4) and (7)] 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) [(f)] Bulk sewage sludge must [shall] 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. [On a case-by-case basis, a whole sludge application rate may exceed the agronomic rate for a time application to a reclamation site.]

~~(f)~~ [(g)] Bulk sewage sludge must [shall] 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)~~ [(h)] Groundwater protection measures [Ground Water Protection Measures].

(1) A seasonal [Seasonal] high groundwater [ground water] table must [shall] 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 [Seasonal] high groundwater [ground water] table must [shall] 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 [twenty] inches per hour).

(3) Seasonal generally refers to a groundwater [ground water] table that [which] may be perched on a less permeable soil or geologic unit and fluctuates with seasonal climatic variation or that [which] 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 [ground water] 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 [ground water] contamination.

(h) [(i)] Sludge must [shall] 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 [shall] be applied uniformly over the surface of the land.

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

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

(4) Sludge may [shall] 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 [shall] not be applied under provisions of this section on land within a designated floodway.

(i) [(j)] Either a label must [shall] 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 [shall] be provided to the person who receives sewage sludge sold or given away in another [a other] container for application to the land. The label or information sheet must [shall] contain the following information:

(1) the name and address of the person who prepared the sewage sludge for sale or given [give] 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;

(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) [(Table 4)] of this title (relating to Metal Limits) to be exceeded.

(j) [(k)] Nuisance controls [Controls].

(1) A land application site location must [shall] 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) [(l)] A permit or registration must [for the beneficial use of sewage sludge shall] specify the soil testing requirements for each application area.

(1) The testing frequency must take [shall be in accordance with a plan proposed by the registrant in the application, which takes] 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 [registration shall] 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 [shall] not be required for portions of the authorized [registration] 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 [Section of the Watershed Management] Division, the Wastewater Permitting Section of the Water Quality Division, and the 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 [appropriate] requirements [by September 1 of each year]; [and]

(B) [(2)] the information in §312.47(a)(5)(A)(i) - (iv) of this title [by September 1 of each year] if:

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

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

(iii) [(C)] sewage [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;

(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 be 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 proposed 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 shall 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 proposed 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 [shall] be met.

(B) The requirements of the chosen alternative for pathogen reduction from paragraph (2) of this subsection must [shall] be met prior to or at the same time as the vector attraction reduction requirements, except the requirements in [paragraphs] §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 [shall] 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 [shall] 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 [give] 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 [shall] 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 [shall] be 50 degrees Celsius or higher; the time period must [shall] be 20 minutes or longer; and the temperature and time period must [shall] be determined using the equation in this clause [(2)], 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)

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

$$10^{0.1400t}$$

D = time in days.

t = temperature in degrees Celsius.

[Figure: 30 TAC §312.82(a)(2)(A)(i)]

(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 [shall] be 50 degrees Celsius or higher, the time period must [shall] be 15 seconds or longer, and the temperature and time period must [shall] be determined using the equation [(2) as] found 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 [shall] be determined using the equation [(2) as] found 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 [shall] be determined using the equation in this clause [(3)].

Figure: 30 TAC §312.82(a)(2)(A)(iv)

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

D = time in days.
t = temperature in degrees Celsius.

[Figure: 30 TAC §312.82(a)(2)(A)(iv)]

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

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

(ii) The temperature of the sewage sludge must [shall] 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 [72 hour] period during which the pH of the sewage sludge is above 12, the sewage sludge must [shall] 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 [shall] be analyzed prior to pathogen treatment to determine whether the sewage sludge contains enteric viruses and viable helminth ova.

(i) - (vi) (No change.)

(D) Alternative 4. The sewage sludge that is used or disposed of must [shall] 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 [shall] 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 [give] 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).

(ii) The density of viable helminth ova in the sewage sludge must [shall] 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) [(PFRP)]). Sewage sludge that is used or disposed of must [shall] be treated in one of the PFRP [Processes to Further Reduce Pathogens (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 [shall] be treated in a process that has been approved by the United States [U.S.] 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 [shall] 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 [shall] be met.

(B) The site restrictions in paragraph (3) of this subsection must [shall] 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 [shall] 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 [shall] be less than either 2,000,000 Most Probable Number per gram of total solids (dry weight basis) or 2,000,000 Colony-forming [Colony forming] Units per gram of total solids (dry weight basis).

(2) Processes to Significantly Reduce Pathogens (PSRP) [PSRP] compliance alternatives - Class B. Sewage sludge that is used or disposed of must [shall] be treated in one of the PSRP [Processes to Significantly Reduce Pathogens] described in 40 CFR Part 503, Appendix B₂ or must [shall] be treated by an equivalent process approved by the EPA [U.S. Environmental Protection Agency], so long as all of the following requirements are met by the generator of the sewage sludge:

(A) prior [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 [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 [Processes to Significantly Reduce Pathogens] 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 [shall] include a statement indicating that the design meets all the applicable standards specified in 40 CFR Part 503, Appendix B [of 40 CFR Part 503];

(C) prior [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 [processes to significantly reduce pathogens] 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 [Processes to Significantly Reduce Pathogens]. The acceptable processes and the minimum operational and recordkeeping requirements must [shall] be in accordance with established EPA [U.S. Environmental Protection Agency] final guidance;

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

(E) in [In] lieu of a generator obtaining a certification as specified in subparagraph (B) of this paragraph, the executive director will accept from the EPA [U.S. Environmental Protection Agency] a finding of equivalency to the defined PSRP [Processes to Significantly Reduce Pathogens]; and

(F) if [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 [shall] meet one of the PSRP [Processes to Significantly Reduce Pathogens], and [shall] meet the certification, operation, and recordkeeping [record keeping] 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 [shall] 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 [shall] 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 [shall] 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 [shall] not be harvested for at least 30 days after application of sewage sludge.

(E) Animals must [shall] 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 [shall] 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 [shall] 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 [shall] be restricted for at least 30 days after application of the sewage sludge.

(c) Domestic septage.

(1) The site restrictions in subsection (b) [paragraph] (3) of this section must [shall] 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 [shall] be raised to 12 or higher by alkali addition and, without the addition of more alkali, must [shall] 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 proposed 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 shall 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 proposed 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 [TNRCC] 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 [TNRCC]. A completed application must [shall] be submitted to the commission's [TNRCC's] Permitting Section of the Water Quality [Watershed Management] 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 [CFR,] Part 257.

SUBCHAPTER G: TRANSPORTERS AND TEMPORARY STORAGE PROVISIONS

§312.145

STATUTORY AUTHORITY

The amendment is proposed 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 shall 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 proposed amendment implements HB 2546.

§312.145. Transporters - Recordkeeping [Record Keeping].

(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 [shall] be in the form of a trip ticket. Similar documentation may be used with written approval by the executive director. The trip ticket must [shall] include:

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

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

(3) - (5) (No change.)

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

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

(8) (No change.)

(b) Maintenance of records and reporting.

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

(A) One part of the trip ticket must [shall] 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 [shall] 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 [shall] go to the receiving facility.

(D) One part of the trip ticket must [shall] 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 [shall] be returned by the transporter to the person who generated the waste [wastes] within 15 days after the waste is received at the disposal or processing facility.

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

(2) Record retention [Copies]. Copies of trip tickets must [shall] be retained for five years and be readily available for review by commission's 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 [record keeping] system, if approved by the executive director.

(4) Reporting [Submission of reports]. By July 1 [June 15th], transporters must [shall] 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) - (C) (No change.)

(c) Discrepancies. A facility that [which] 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 [which] can be discovered by inspection or waste analysis. Significant discrepancies in quantity are:

(A) - (B) (No change.)

(2) (No change.)

(d) Notification. A facility that [which] receives waste from a transporter that [who] cannot produce a registration acknowledgment under [pursuant to] §312.142(c) of this title (relating to Transporter Registration) must [shall] notify the appropriate Regional Office of the commission [TNRCC] within three days of the waste receipt of the transporter's failure to produce a current registration authorization.

(e) (No change.)