

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts an amendment to §312.9, concerning Sludge Fee Program. The amendment is adopted without changes to the proposed text as published in the May 19, 2000 issue of the *Texas Register* (25 TexReg 4482) and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULE

The purpose of the change to Chapter 312 is to incorporate recent changes required by House Bill (HB) 3288, 76th Legislature, 1999, which prohibit the TNRCC from charging disposal fees for sewage sludge that has been treated to the lowest pathogen density level provided by commission rules and that meets metal concentration limits, vector attraction reduction, and pathogen reduction requirements.

SECTION BY SECTION DISCUSSION

No sections were changed from the original proposal.

FINAL REGULATORY IMPACT ANALYSIS

Staff has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and has determined that the rulemaking does not meet the definition of a major environmental rule as defined by the Texas Government Code. “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 adopted amendment is administrative in that it would eliminate a fee for

the disposal of sewage sludge that has been properly treated. The removal of this fee should benefit persons involved in the management of this material and therefore does not materially affect the economy in an adverse way. Elimination of the fee promotes proper treatment of sewage sludge and does not adversely affect the environment, or the public health and safety of the state or a sector of the state.

In addition, the adopted rules do not exceed a standard set by federal law, exceed an express requirement of state law, or exceed a requirement of a delegation agreement. The amendment implements the specific provisions of HB 3288, which removed the commission's authority to assess such a fee.

TAKINGS IMPACT ASSESSMENT

Staff has prepared a takings impact assessment for the rule under Texas Government Code, §2007.043. Promulgation and enforcement of the rule will not burden private real property because the action proposed removes fee requirements for disposal of certain sludges. This action does not constitute a taking of private property.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

Staff has reviewed this rulemaking proposal and found that it is subject to the Texas Coastal Management Program (CMP) and is consistent with all applicable goals and policies of the CMP. The rule conforms with §501.14(d) of the Coastal Coordination Act Implementation Rules by promoting the proper treatment of sewage sludge to reduce pathogens as required by the Texas Solid Waste Disposal

Act, §361.022(c) through the elimination of a disposal fee on sewage sludge that has been properly treated. Additionally, this rule amendment implements administrative changes without significantly affecting the current substantive requirements which provide for the protection of the environment and public health and safety.

HEARING AND COMMENTERS

No hearing requests were received on the proposal.

ANALYSIS OF TESTIMONY

No written comments were received on the proposal.

STATUTORY AUTHORITY

The amendment is adopted under Texas Water Code, §5.103, which provides the commission with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state and to establish and approve all general policies of the commission; and the Texas Solid Waste Disposal Act, Health and Safety Code, §361.011, which provides the commission with the authority to manage municipal waste and §361.013, which provides the commission with the authority to adopt rules and establish fees for the transportation and disposal of solid waste. The proposed amendment implements HB 3288, 76th Legislature, 1999.

SUBCHAPTER A : GENERAL PROVISIONS

§312.9

§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 pursuant to the commission's authority in the Texas Health and Safety Code, Chapter 361, or a permit issued 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, transported or disposed of in the state, tracks the amount of processing, transporting and disposal capacity and reserve capacity, and enables equitable assessment and collection of fees.

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

(b) Except as provided in subsection (f) of this section, the amount of the annual fee which is assessed is determined by weight of solids disposed of and reported to the commission as of September 1, of each year. Failure to report the disposal of sewage sludge or water treatment sludge does not exempt a registrant or permitted from this fee. The fees shall be as follows.

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

(2) When water treatment sludge is mixed with a Class B sewage sludge or when sewage sludge that is classified as Class B is applied to the land for beneficial use as described in Subchapter B of this chapter (relating to Land Application) the fee 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 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, 1995 or thereafter, the fee 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 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 Standards for Sludge Incineration) the fee 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 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 shall be as follows.

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

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

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

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

(d) Fees assessed in subsection (b) of this section shall be paid, by the registrant or permittee after being billed by the executive director, prior to October 1, of each year. Fees assessed in subsection (c) of this section shall be paid by the registrant after billing by the executive director, prior to September 1, of each year. Fees shall be paid by check, certified check, or money order payable to the 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 yard waste at a composting facility, including a composting facility located at a permitted landfill site. This subsection does not apply if it is not used as compost and is deposited in a surface disposal site or landfill.

