

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §312.9, concerning Sludge Fee Program.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The purpose of the proposed change to Chapter 312 is to incorporate recent changes required by House Bill (HB) 3288, 76th Legislature, 1999, which prohibit the Texas Natural Resource Conservation Commission (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

Proposed amendments to §312.9(b)(2) will delete this paragraph to conform with HB 3288. The commission can no longer charge a solid waste disposal fee for sewage sludge that has been treated to reduce the density of pathogens to the lowest level provided by TNRCC rules.

FISCAL NOTE

Jeffrey Horvath, Strategic Planning and Appropriations, has determined that for the first five-year period the proposed amendments are in effect, there will be no significant fiscal implications for units of state or local government as a result of administration or enforcement of the proposed amendments. The amendments would implement provisions of House Bill 3288 (Relating to the exclusion of certain sewage sludge from solid waste disposal fees), 76th Legislature, 1999.

The proposed rule amendments would eliminate disposal fees charged to wastewater treatment plants or other processors who produce and use Class A sewage sludge. Class A sewage sludge is defined as material that has been treated to reduce the density of pathogens to the lowest level provided by agency rule, and complies with commission rules regarding metal concentration limits, pathogen reduction, and vector attraction reduction.

The loss in disposal fee revenue, estimated to be \$40,000 per year, is not significant and minimal economic impacts are anticipated to TNRCC. There will be insignificant savings in staff time related to fee assessments.

Local units of government that own and operate wastewater treatment facilities may realize some cost savings for producing Class A sludge, depending on the amount produced. Current fees are \$0.20 per dry ton of the material produced. Facilities that produce this material through composting are already exempt from disposal fees under current agency rule. There are 11 entities currently authorized to market and distribute Class A sludge to consumers, most of which are wastewater treatment facilities owned by units of local government. In general, cost savings to these facilities is not expected to be significant due to the abatement of the fee assessment, depending on the amount of material produced.

PUBLIC BENEFIT

Mr. Horvath has also determined that for each of the first five years the proposed amendments are in effect, the public benefit anticipated will be to stimulate the production of sewage sludge for use rather than disposal, divert potential waste from landfills, and recycle a valuable product. The proposed rule

amendments would eliminate disposal fees charged to wastewater treatment plants or other processors for the production and use of Class A sewage sludge. Class A sewage sludge is defined as material that has been treated to reduce the density of pathogens to the lowest level provided by agency rule, and complies with commission rules regarding metal concentration limits, pathogen reduction, and vector attraction reduction.

Wastewater treatment plants may realize some cost savings for producing Class A sludge, depending on the amount produced. Current fees are \$0.20 per dry ton of the material produced. There are currently 11 entities authorized to market and distribute the material, most of which are wastewater treatment plants owned or operated by units of local government. Cost savings to these facilities from the abatement of the fee assessment is not anticipated to be significant depending on the amount of material produced.

Any business affected by the proposed rule would realize cost savings from the elimination of the fee assessment, but these savings are not anticipated to be significant depending upon the amount of material produced and used.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSES

No adverse economic affects are anticipated to any small business as a result of the implementation of the proposed amendments because fee assessments for the production of certain sewage sludge will be eliminated. The amendments would implement provisions of House Bill 3288 (Relating to the exclusion of certain sewage sludge from solid waste disposal fees), 76th Legislature, 1999.

The proposed rule amendments would eliminate disposal fees charged to wastewater treatment plants or other processors for the production and use of Class A sewage sludge. Class A sewage sludge is defined as material that has been treated to reduce the density of pathogens to the lowest level provided by agency rule, and complies with commission rules regarding metal concentration limits, pathogen reduction, and vector attraction reduction.

Although no small or micro-business has been identified to be affected by the proposed rule, any affected small or micro-business would realize cost savings due to the abatement of the fee assessment. Most of the facilities affected by the proposed amendments will be owned or operated by units of local government. However, for those that are small businesses some cost savings could be realized, though these are not anticipated to be significant, depending on the amount of material produced.

DRAFT REGULATORY IMPACT ANALYSIS

Staff has reviewed the proposed 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 proposed 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 proposed 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 House Bill 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.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lisa Martin, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1998-079-312-WT. Comments must be received by 5:00 pm., June 19, 2000. For further information, please contact Dan Burke, Policy and Regulations Division, (512) 239-1543.

STATUTORY AUTHORITY

The amendment is proposed 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 [meaning], unless the context clearly indicates otherwise.

(1) - (3) (No change.)

(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 A sewage sludge or when sewage sludge that is classified as Class A is destined to be applied to the land for a beneficial use, the fee shall be \$0.20 per dry ton.]

(2) (3) 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) (4) 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) (5) 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) (6) 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 [(relating to Disposal of Water Treatment Sludge)], the fee shall be \$0.20 per dry ton.

(6) (7) 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) - (f) (No change.)