

The Texas Commission on Environmental Quality (commission) proposes amendments to §312.2 and §312.8.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to Chapter 312, concerning Sludge Use, Disposal, and Transportation; 30 TAC Chapter 324, concerning Used Oil Standards; and 30 TAC Chapter 330, concerning Municipal Solid Waste. This rulemaking is the result of that petition. The petition identified a conflict in commission rules where waste in waste management units containing recyclable used oil could be construed as being jointly regulated under Chapter 324 and Chapters 330 and 312.

On November 14, 2002, an advisory group meeting was held in Austin, Texas, to receive input from the regulated community and other interested entities on the proposed rule language, developed from the petition and the draft rule amendments to Chapters 312, 324, and 330. Entities registered in accordance with the Chapter 312 requirements voiced concern about alternative management of grit trap waste (i.e., the proposal to allow for commingling of grit trap waste regulated under Chapter 312 and used oil regulated under Chapter 324). Many of the advisory group members commented that there is no justification for a change to the current regulations. Advisory group members also commented that grit traps are not designed to accumulate oil and the existence of significant amounts of used oil found in grit traps indicates operational issues at facilities where such grit trap waste is found. The majority of the advisory group and other interested entities recommended changes to clarify that Chapter 312 does not apply to oily water mixtures in waste management units and that oil-water mixtures from waste

management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission has identified language modifications that are needed in Chapters 312, 324, and 330 regarding this matter and, therefore, rule language modifications are being proposed concurrently for these chapters.

SECTION BY SECTION DISCUSSION

Proposed §312.2, Applicability, amends subsection (g) to indicate that Chapter 312 does not apply to oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation. Oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. Two commas are proposed for deletion in subsection (f) because they are not needed.

Proposed §312.8, General Definitions, adds new paragraph (37) to provide a definition of grit trap and amends the definition of grit trap waste.

FISCAL NOTE

Jan Washburn, Manager of Strategic Planning, has determined that, for the first five-year period the proposed rules are in effect, there will be no significant fiscal implications for the agency or any other unit of state or local government as a result of administration or enforcement of the proposed rules. There will be no fiscal impact to the agency.

Ms. Washburn also determined that, for each of the first five years the proposed rules are in effect, the public benefit anticipated from the enforcement of the proposed rules will be potentially increased readability of the rules by persons regulated by the agency. This should assist the regulated community in selecting the best management practice for their particular waste. Additionally, it is anticipated the change will assist agency Field Operations staff in enforcement of the rules. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rules. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rules. The commission has 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

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. The proposed rulemaking does not meet any of the four applicability requirements listed in §2001.0225(a).

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 proposed rule amendments do not satisfy the definition of a major environmental rule. This rulemaking proposes to add regulatory

language which states that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation are not regulated under Chapter 312. In addition, the proposed rules contain language stating that oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The proposed rulemaking adds a definition of grit trap and amends the definition of grit trap waste. The amendments are not a major environmental rule because they are not expected to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. This rulemaking does not qualify as a major environmental rule because it does not have as its specific intent the protection of the environment or the reduction of risk to human health from environmental exposure.

In addition, a draft regulatory impact assessment is not required because the rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rulemaking does not exceed a standard set by federal law, but conforms with federal law. The rulemaking does not exceed an express requirement of state law but conforms with state law. This rulemaking does not 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. This rulemaking does not adopt a rule solely under the general powers of the agency, but also under specific state law, namely Texas Health and Safety Code (THSC), §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures. Finally, this

rulemaking is not proposed on an emergency basis to protect the environment or to reduce risks to human health from environmental exposure. The commission invites public comment on the draft regulatory analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission performed a preliminary analysis for this proposed rulemaking in accordance with Texas Government Code, §2007.043. The specific purpose of the rulemaking is to explain that oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil-water separation or have been engineered for oil-water separation are not regulated under Chapter 312 and to explain that oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The proposed rulemaking will substantially advance the stated purpose by adding a definition of grit trap in §312.8 and adding language in §312.2(g) specifying that waste in certain waste management units containing recyclable used oil is regulated under Chapter 324 and is not subject to Chapter 312. The promulgation and enforcement of these amended rules will not burden private real property nor adversely affect property values because the proposed rule amendments will merely specify that waste in certain waste management units that contain recyclable used oil is being regulated solely under the used oil rules in Chapter 324. Therefore, the proposed rulemaking will not constitute a takings under Texas Government Code, Chapter 2007.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is a rulemaking identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP), or will affect an action and/or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6), and will therefore require that applicable goals and policies of the CMP be considered during the rulemaking process. The commission has prepared a consistency determination for the proposed rules under 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goal applicable to the proposed rulemaking is the goal to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas. CMP policies applicable to the proposed rules include the construction and operation of solid waste treatment, storage, and disposal facilities, and the discharge of municipal and industrial wastewater to coastal waters. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies because the proposed rule changes do not modify or alter standards set forth in existing rules and do not govern or authorize any actions subject to the CMP. The proposed rulemaking defines grit trap and grit trap waste; indicates that Chapter 312 does not apply to oily water mixtures in waste management units; and indicates that oil-water mixtures from waste management units designed for oil-water separation must comply with the requirements found in Chapter 324. The commission invites public comment on the consistency determination of the proposed rules.

SUBMITTAL OF COMMENTS

Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808.

Comments must be received by 5:00 p.m., July 7, 2003, and should reference Rule Log Number 1999-074-312-WS. For further information, please contact Michael Bame, Policy and Regulations Division, at (512) 239-5658.

SUBCHAPTER A: GENERAL PROVISIONS

§312.2, §312.8

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code (TWC), §5.103, which provides the commission with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the state and to adopt rules repealing any statement of general applicability that interprets law or policy; TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule; THSC, §361.011, which gives the commission all powers necessary and convenient to carry out its responsibilities concerning the regulation and management of municipal solid waste; THSC, §361.024, which provides the commission with the authority to adopt and promulgate rules consistent with the general intent and purposes of the THSC; and THSC, §371.028, which directs the commission to implement the used oil recycling program by adopting rules, standards, and procedures.

The proposed amendments implement TWC, §5.103 and §5.105; and THSC, §361.024 and §371.028.

§312.2. Applicability.

(a) - (e) (No change.)

(f) This chapter applies to land where sewage sludge or domestic septage is applied[,] to a surface disposal site[,] and to a sewage sludge incinerator.

(g) This chapter applies to any person who transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste. This chapter does not apply to oily water mixtures in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute for oil/water separators or have been engineered for oil-water separation. These waste management units by design are not plumbed to a municipal sanitary sewer. Oil-water mixtures from the waste management units designed for oil-water separation must comply with the requirements found in Chapter 324 of this title (relating to Used Oil Standards).

(h) - (l) (No change.)

§312.8. General Definitions.

The following words and terms, when used in this chapter, have the following meanings.

(1) - (36) (No change.)

(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.

(38) [(37)] **Grit trap waste** - Includes waste from interceptors 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.

(39) [(38)] **Groundwater** - Water below the land surface in the saturated zone.

(40) [(39)] **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.

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

(42) [(41)] **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.

(43) [(42)] **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.

(44) [(43)] **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.

(45) [(44)] **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.

(46) [(45)] **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.

(47) [(46)] **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.

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

(49) [(48)] **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.

(50) [(49)] **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).

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

(52) [(51)] **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.

(53) [(52)] **Off-site** - Property which cannot be characterized as “on-site.”

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

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

(56) [(55)] **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.

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

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

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

(60) [(59)] **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.

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

(62) [(61)] **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.

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

(64) [(63)] **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.

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

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

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

(68) [(67)] **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.

(69) [(68)] **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.

(70) [(69)] **Sewage sludge debris** - Solid material such as rubber, plastic, glass, or other trash 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.

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

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

(73) [(72)] **Sludge unit boundary** - The outermost perimeter of a surface disposal site.

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

(75) [(74)] **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.

(76) [(75)] **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.

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

(78) [(77)] **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).

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

(80) [(79)] **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.

(81) [(80)] **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.

(82) [(81)] **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.

(83) [(82)] **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.

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

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

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

(87) [(86)] **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.

(88) [(87)] **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).

(89) [(88)] **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.