

The Texas Commission on Environmental Quality (commission) proposes an amendment to §324.3.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

On September 15, 1999, the commission granted a petition for rulemaking by Safety-Kleen Systems, Inc. for amendments to 30 TAC Chapter 312, concerning Sludge Use, Disposal, and Transportation; 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 DISCUSSION

Proposed §324.3, Applicability, adds new paragraph (5) to indicate that oily water mixtures contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute or have been engineered for oil-water separation and are not plumbed to a municipal sanitary sewer system, must be managed solely under this chapter. Other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements found in Chapters 312 and 330. Throughout the section administrative changes are proposed in accordance with *Texas Register* requirements and to be consistent with other agency rules.

FISCAL NOTE

Jan Washburn, Manager of Strategic Planning, has determined that, for the first five-year period the proposed rule is 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 rule. There will be no fiscal impact to the agency.

Ms. Washburn also determined that, for each of the first five years the proposed rule is in effect, the public benefit anticipated from the enforcement of the proposed rule will be potentially increased

readability of the rule 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 rule. No significant fiscal implications are anticipated for any individual or business due to implementation of the proposed rule. Additionally, no significant fiscal implications are anticipated for any small or micro-business due to implementation of the proposed rule. The commission has determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the 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. This proposed rule amendment does not satisfy the definition of a major environmental rule. This rulemaking proposes to add regulatory language which states that oily water mixtures contained in waste management units such as tanks, fractionation tanks, and sumps that meet the design requirements of the American Petroleum Institute or

have been engineered for oil-water separation, and are not plumbed to a municipal sanitary sewer system; and may be managed solely under this chapter. Other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements found in Chapters 312 and 330. The amendment is not a major environmental rule because it is 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 because it conforms to the requirement under 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. 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 THSC, §371.028. 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 add regulatory language which states that oily water mixtures contained in waste management units such as tanks, fractionation tanks and sumps that meet the design requirements of the American Petroleum Institute or have been engineered for oil-water separation, and are not plumbed to a municipal sanitary sewer system; may be managed solely under this chapter. Other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements found in Chapters 312 and 330. 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 this amended rule will not burden private real property nor adversely affect property values because the proposed rule amendment will explain that certain waste that contains 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 rule 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 rule 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 this rule 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 rule.

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: USED OIL RECYCLING

§324.3

STATUTORY AUTHORITY

The amendment is 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 amendment implements TWC, §5.103 and §5.105; and THSC, §361.024 and §371.028

§324.3. Applicability.

Applicability and exemptions from applicability will be as in 40 Code of Federal Regulations (CFR) [CFR] Part 279, Subpart B, and as clarified here.

(1) (No change.)

(2) Used oil can be stored in tanks and containers not meeting 40 CFR Part 264 or 265. The requirement in 40 CFR Part 279 that refers to compliance with Part [Parts] 264 or 265, Subpart K, on used oil storage applies to used oil stored in surface impoundments. Storage of used oil in lagoons, pits, or surface impoundments is prohibited, unless the generator is storing only wastewater containing de minimis quantities of used oil, or unless the unit is in compliance with 40 CFR Part 264 or 265 [264/265], Subpart K.

(3) Requirements applicable to mixing hazardous waste with used oil are in 40 CFR §279.10(b) (relating to Mixtures of Used Oil and Hazardous Waste). Mixing of hazardous waste with used oil, by other than generators, in tanks and containers within their applicable accumulation time limit, requires a hazardous waste permit per [30 TAC] §335.2 of this title (relating to Permit Required). A waste that is characteristically hazardous for “ignitability only” can be mixed with used oil. However, the resultant mixture cannot exhibit the hazardous ignitability characteristic to manage it under this chapter and 40 CFR Part 279 rather than Chapter 335 of this title. The resultant mixture formed from mixing used oil and a characteristically hazardous waste, other than solely ignitable waste, must be tested for all likely hazardous characteristics. The resultant mixture will be a hazardous waste rather than used oil if it retains a hazardous characteristic, even if the hazardous characteristic is derived from the used oil. Anyone who mixes used oil with another solid waste to produce from used oil, or to make used oil more amenable for production of fuel oils or products is also a processor

subject to 40 CFR Part 279, Subpart F (relating to Standards for Used Oil Processors and Re-refiners) and §324.12 of this title [chapter] (relating to Processors and Rerefiners).

(4) A used oil shall not be regulated until it is a spent material as defined in 40 CFR §261.1(c)(1) and [30 TAC] §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials).

(5) Oily water mixtures contained 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 and are not plumbed to a municipal sanitary sewer system must be managed solely under this chapter. Management of wastes from other tanks, sumps, and grit trapping waste management units that are plumbed to a municipal sanitary sewer must comply with the requirements in Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation) and Chapter 330 of this title (relating to Municipal Solid Waste).