To: Commissioners
Date: September 20, 2019

Thru: Bridget C. Bohac, Chief Clerk
Toby Baker, Executive Director

From: L'Oreal W. Stepney, P.E., Deputy Director
Office of Water

Docket No.: 2019-0391-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 312, Sludge Use, Disposal, and Transportation
Administrative Updates to the Sludge Rule
Rule Project No. 2017-035-312-OW

Background and reasons for the rulemaking:
The Office of Water is initiating rule changes to the Chapter 312 rules to provide clarification for the intent of rule requirements.

Scope of the rulemaking:
The rulemaking will clarify the intent of existing rule requirements, remove inconsistencies, and improve readability.

A.) Summary of what the rulemaking will do:
Clarifications include the following:

- that the rules do not authorize the land application of domestic sewage sludge mixed with processed or unprocessed grit trap or grease trap waste;
- which buffer zones are required to be established at issuance of a permit or registration and maintained at all times;
- that the 750-foot buffer for an established school, institution, business, or occupied residential structure must be established at issuance of a permit or registration and re-evaluated during renewal or major amendment of a permit or registration;
- processing of sewage sludge or domestic septage would require an authorization under 30 TAC Chapter 330 or 332 if processing facility is not located at a permitted domestic wastewater treatment plant;
- adding general requirements, metal limits, management practices, monitoring, recordkeeping and reporting for water treatment sludge to be consistent with federal requirements and longstanding registration and permitting practices;
- making the quarter-mile notice requirements for Class B land application permits consistent with Texas Health and Safety Code (THSC), §361.121(c); and
- improving readability of the current transportation and temporary storage rules.

Other changes include the following:

- the use of the term “biosolids” as it pertains to beneficial land application of treated domestic sewage sludge (Class A, Class AB and Class B);
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- renaming Water Treatment Sludge to Water Treatment Residuals to be consistent with accepted industry terminology;
- revising and adding definitions based on stakeholder input and assist in clarifying existing rule language; and
- including recordkeeping and reporting requirements for storage, staging and harvesting at land application sites.

B.) Scope required by federal regulations or state statutes:
None.

C.) Additional staff recommendations that are not required by federal rule or state statute:
None.

Statutory authority:
- Texas Water Code (TWC), §5.013, establishes the general jurisdiction of the Texas Commission on Environmental Quality (TCEQ);
- TWC, §5.102, provides the TCEQ with the authority to carry out its duties and general powers under its jurisdictional authority as provided by TWC, §5.103;
- TWC, §5.103, requires the commission to adopt any rule necessary to carry out its powers and duties under the code and other laws of the state;
- TWC, §5.105, authorizes the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC;
- TWC, §5.120, requires the TCEQ to administer the law for the maximum conservation and protection of the environment and natural resources of the state;
- TWC, §26.011, provides the TCEQ with the authority to establish the level of quality to be maintained in, and to control the quality of, the water in the state;
- TWC, §26.034, gives the TCEQ the authority to set standards to prevent the discharge of waste that is injurious to the public health;
- TWC, §26.027, authorizes the TCEQ to issue permits for the discharge of waste or pollutants into or adjacent to water in the state; and
- THSC, §361.121, which gives the TCEQ the authority to require a permit before a responsible person may apply Class B sludge on a land application unit.

Effect on the Regulated community, the public and agency programs:
The proposed rulemaking would provide a consistent interpretation of rule requirements.

Stakeholder meetings:
One stakeholder meeting was held on October 30, 2017. Stakeholders were invited to provide recommended changes or clarifications to staff by December 15, 2017. The status of the rulemaking will be discussed at the quarterly Water Quality Advisory workgroup meetings. A public meeting will be held during the public comment period.

Potential controversial concerns and legislative interest:
Although the scope of the rulemaking is to provide clarity to the existing requirements. Stakeholders may dispute the following:
the prohibition of the land application of processed or unprocessed grit trap and
grease trap waste combined with domestic sewage sludge;
that a processing authorization would be required for the initial lime stabilization
for treatment of domestic septage;
that all buffer zone requirements in §312.44 be established and maintained at all
times and not during the renewal of a permit or registration; and
the change in the definition of harvesting as it relates to cutting and removing vs.
cutting and leaving vegetation on the surface of the land.

Will this rulemaking affect any current policies or require development of new
policies?
No.

What are the consequences if this rulemaking does not go forward? Are there
alternatives to rulemaking?
The alternative is to not proceed with proposed rulemaking. The Office of Water is
recommending this rulemaking to provide clarifications in the rule. Failure to make these
clarifications would result in continued misinterpretation of the intent of the rules.

Key points in the proposal rulemaking schedule:
- Anticipated proposal date: October 9, 2019
- Anticipated Texas Register publication date: October 25, 2019
- Anticipated public hearing date: November 19, 2019
- Anticipated public comment period: October 25, 2019 – November 26, 2019
- Anticipated adoption date: March 2020

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Attachments:
None.

cc: Chief Clerk, 2 copies
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