

**SUBCHAPTER A: GENERAL PROVISIONS**

**§§312.1 - 312.13**

**Effective October 2, 2014**

**§312.1. Purpose.**

This chapter establishes standards, which consist of general requirements, pollutant limits, management practices, and operational standards, for the final use or disposal of sewage sludge generated during the treatment of domestic sewage in a treatment works, and for the final use or disposal of domestic septage. Standards are included in this chapter for sewage sludge and domestic septage applied to the land for beneficial use, or placed on a surface disposal site. Standards are also included in this chapter for sewage sludge fired in a sewage sludge incinerator. The standards applicable to the disposal of water treatment sludge are included. Also included in this chapter are pathogen and vector attraction reduction requirements for sewage sludge and domestic septage applied to the land or placed on a surface disposal site. In addition, the standards in this chapter include the frequency of monitoring and record keeping requirements when sewage sludge or domestic septage is applied to the land or placed on a surface disposal site. Also included are the frequency of monitoring and record keeping requires when sewage sludge is fired in a sewage sludge incinerator. Also included are requirements relating to the transportation of sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste and grease trap waste.

Adopted September 26, 1995

Effective October 13, 1995

**§312.2. Applicability.**

(a) This chapter applies to any person who prepares sewage sludge or domestic septage.

(b) This chapter applies to any person who fires sewage sludge in a sewage sludge incinerator.

(c) This chapter applies to any person who applies sewage sludge or domestic septage to the land and to the owner/operator of a surface disposal site.

(d) This chapter applies to sewage sludge or domestic septage applied to the land or placed on a surface disposal site.

(e) This chapter applies to sewage sludge fired in a sewage sludge incinerator.

(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 designed for oil-water separation. Recycling of 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). Waste in waste management units that do not meet the design criteria in this subsection and that are plumbed directly to a sanitary sewer are covered by this chapter.

(h) This chapter applies to the exit gas from a sewage sludge incinerator stack.

(i) This chapter applies to any person who applies water treatment sludge for disposal in a landfill, surface impoundment, or waste pile, as defined in 40 Code of Federal Regulations (CFR) §257.2.

(j) This chapter applies to any person who applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards).

(k) This chapter applies to water treatment sludge which is disposed of in a landfill, surface impoundment, or waste pile, as defined in 40 CFR §257.2.

(l) This chapter applies to water treatment sludge which is disposed of in a land application unit, as defined in §312.121 of this title.

Adopted September 10, 2003

Effective October 2, 2003

### **§312.3. Exclusions.**

(a) This chapter does not establish requirements for processes used to treat domestic sewage or for processes used to treat sewage sludge prior to final use or disposal, except as provided in §312.82 and §312.83 of this title (relating to Pathogen Reduction and Vector Attraction Reduction).

(b) This chapter does not require the selection of a method of use or disposal for sewage sludge. The determination of the manner in which sewage sludge is used or disposed is a local determination.

(c) This chapter does not establish requirements for sewage sludge co-fired in an incinerator with other wastes or for the incinerator in which sewage sludge and other wastes are co-fired. Other wastes do not include auxiliary fuel, as defined in 40 CFR §503.41(b), fired in a sewage sludge incinerator.

(d) This chapter does not establish requirements for the use and disposal of sewage sludge generated at an industrial facility, unless the sewage sludge is of a domestic origin and the sewage sludge is generated from the treatment of domestic sewage. If a process at an industrial facility that primarily treats industrial wastewater combines domestic sewage with any type of industrial solid waste, any resulting sludge, process waste or wastewater generated at the industrial facility will be considered to be industrial solid waste and must be processed, stored, or disposed of in accordance with the applicable requirements of Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste). If a facility that primarily treats domestic wastewater combines domestic sewage with any type of industrial solid waste, any resulting sludge, process waste or wastewater generated at the facility will be considered to be domestic sludge and must be processed, stored, or disposed of in accordance with the applicable requirements of this chapter.

(e) This chapter does not establish requirements for the use or disposal of sewage sludge or other wastes determined to be a hazardous waste, as defined in §335.1 of this title (relating to Definitions) or as determined in accordance with 40 CFR Part 261.

(f) This chapter does not establish requirements for the use or disposal of sewage sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry weight basis).

(g) This chapter does not establish requirements for the use or disposal of ash generated during the firing of sewage sludge in a sewage sludge incinerator.

(h) This chapter does not establish requirements for the storage of sewage sludge, grease trap waste, chemical toilet waste, or grit trap waste, except as provided for in §312.50 of this title (relating to Storage and Staging of Sludge at Beneficial Use Sites) and §312.147 of this title (relating to Temporary Storage) This chapter does not establish requirements for the processing, use or disposal of grease trap waste, chemical toilet waste, grit (e.g., sand, gravel, cinders, or other materials with a high specific gravity), screenings (e.g., relatively large materials such as rags) or other wastes generated during preliminary treatment of domestic sewage in a treatment works.

(i) This chapter does not establish requirements for the use or disposal of industrial septage or a mixture of domestic septage and industrial septage.

(j) This chapter does not apply to sludge, septage, or any wastes resulting from activities associated with the exploration, development, and production of oil or gas or geothermal resources, as defined in §335.1 of this title, except for domestic septage which may be collected at facilities where such activities occur, that is not mixed in any manner with other oil, gas, or geothermal wastes.

(k) Experimental use shall be excluded from the requirements of this chapter, provided the following conditions are met at the time the sewage sludge is placed on a beneficial use site or reclamation site:

(1) the metal concentrations established in §312.43(b)(3) (Table 3) of this title (relating to Metal Limits) shall be met;

(2) one of the vector attraction reduction alternatives in §312.83(b)(1)-(11) of this title shall be met;

(3) the pathogen reduction compliance requirements established in §312.82(a) or (b) of this title (relating to Pathogen Reduction) shall be met;

(4) the applicant shall receive written approval from the executive director prior to commencement of operations for the experimental project; and

(5) the applicant shall submit to the executive director the aims and goals of the project and any other additional information the executive director believes necessary to establish the experimental nature of the project.

(l) This chapter does not establish requirements for the land application of chemical toilet waste, grease and grit trap waste, milk solids, or similar non-hazardous municipal or industrial solid wastes.

(m) This chapter does not allow for the registration of sludge processing operations or facilities. Such facilities or operations are required to obtain a permit.

Adopted September 26, 1995

Effective October 13, 1995

#### **§312.4. Required Authorizations or Notifications.**

(a) Permits. Except where in conflict with other chapters in this title, a permit shall be required before any storage, processing, incineration, or disposal of sewage sludge, except for storage allowed under this section, §312.50 of this title (relating to the Storage and Staging of Sludge at Beneficial Use Sites), §312.61(c) of this title (relating to Applicability), §312.147 of this title (relating to Temporary Storage), and §312.148 of this title (relating to Secondary Transportation of Waste). Any permit authorizing disposal of

sewage sludge shall be in accordance with any applicable standards of Subchapter C of this chapter (relating to Surface Disposal) or §312.101 of this title (relating to Incineration). No permit will be required under this chapter if issued in accordance with other requirements of the commission, as specified in §312.5 of this title (relating to Relationship to Other Requirements).

(1) Effective September 1, 2003, a permit is required for the beneficial land application of Class B sewage sludge. All registrations for the land application of Class B sewage sludge will expire on or before August 31, 2003. A person holding a registration to land apply sewage sludge who submitted an administratively complete permit application on or before September 1, 2002, may continue operations under the existing registration until final commission action on the permit application. For registrations that also authorize the use of Class A, sewage sludge, domestic septage, or water treatment plant sludge, only the provisions for the use of Class B sewage sludge will expire on August 31, 2003; the other provisions will expire on the expiration date of the registration or when a permit authorizing the use of Class A sewage sludge, domestic septage, or water treatment plant sludge is issued for the site.

(2) The effective date of a permit is the date that the executive director signs the permit.

(3) Site permit information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or whenever requested by the commission.

(4) If a permit is required under this chapter, all activities at the site under this chapter, except transportation, shall be incorporated in the permit.

(5) The commission may not issue a Class B sewage sludge permit for a land application unit that is located both in a county that borders the Gulf of Mexico and within 500 feet of any water well or surface water.

(b) Notification of certain Class A or Class AB sewage sludge land application activities.

(1) If sewage sludge meets the metal concentration limits in Table 3 of §312.43(b)(3) of this title (relating to Metal Limits), the Class A or Class AB pathogen reduction requirements in §312.82(a) of this title (relating to Pathogen Reduction), and one of the requirements in §312.83(b)(1) - (8) of this title (relating to Vector Attraction Reduction), it will not be subject to the requirements of §312.10 of this title (relating to Permit and Registration Applications Processing), §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registrations), and §312.13 of this title (relating to Actions and Notice), except as provided in this subsection.

(2) Any generator in Texas or any person who first conveys sewage sludge from out of state into the State of Texas and who proposes to store, land apply, or market and distribute sewage sludge meeting the standards of this subsection shall submit notification to the executive director, at least 30 days prior to engaging in such activities for the first time on a form approved by the executive director. A completed notification form shall be submitted to the Water Quality Division by certified mail, return receipt requested. The notification must contain information detailing:

(A) sewage sludge classification, all points of generation, and wastewater treatment facility identification;

(B) name, address, telephone number, and the longitude and latitude of the site for all persons who are being proposed to receive the sewage sludge directly from the generator;

(C) a description in a marketing and distribution plan that describes any of the following activities:

(i) to sell or give away sewage sludge directly to the public, including a general description of the types of end uses proposed by persons who will be receiving the sewage sludge;

(ii) methods of distribution, marketing, handling, and transportation of the sewage sludge;

(iii) a reasonable estimate of the expected quantity of sewage sludge to be generated or handled by the person making the notification; and

(iv) a description of any proposed storage and the methods that will be employed to prevent surface water runoff of the sewage sludge or contamination of groundwater; and

(D) prior to land application, a map showing the buffer zone areas required under §312.44(c)(2)(D) and (E) of this title (relating to Management Practices) for all persons who are being proposed to receive the sewage sludge directly from the generator that meets one of the Class AB pathogen reduction requirements in §312.82(a)(2) of this title.

(3) Thirty days after the notification has occurred, the activities regulated by this subsection may commence unless the executive director determines that the activities do not meet the requirements of this subsection or an applicant's permit. After receiving a notification, the executive director may review a generator's activities or the

activities of the person conveying the sewage sludge into Texas to determine whether any or all of the requirements of this chapter are necessary. In making this determination, the executive director will consider specific circumstances related to handling procedures, site conditions, or the application rate of the sewage sludge. The executive director may review a proposal for storage of sewage sludge, considering the amount of time and the amount of material described on the notification. Also, in accordance with §312.41 of this title (relating to Applicability), any reasonably anticipated adverse effect that may occur due to a metal pollutant in the sewage sludge may also be considered.

(4) Annually, on September 1, each person subject to notification of certain Class A and Class AB sewage sludge activities required by this subsection shall provide a report to the commission, which shows in detail all activities described in paragraph (2) of this subsection that occurred in the reporting period. The report must include an update of new information since the prior report or notification was submitted and all newly proposed activities. The report must also include a description of the annual amounts of sewage sludge provided to each initial receiver from the in-state generator and for persons who convey out-of-state sewage sludge into Texas, the amounts provided from this person directly to any initial receivers and an updated list of persons receiving the sewage sludge. This report can be combined with the annual report(s) required under §312.48 of this title (relating to Reporting), §312.68 of this title (relating to Reporting), or §312.123 of this title (relating to Annual Report).

(c) Registration of land application sites.

(1) Effective September 1, 2003, registrations may only be obtained for the land application of Class A or Class AB sewage sludge that does not meet the requirements of subsection (b) of this section, water treatment plant sludge, and domestic septage.

(2) The effective date of the registration is the date that the executive director signs the registration in accordance with §312.12(d) of this title. Site registration information on file with the commission must be confirmed or updated, in writing, whenever the mailing address and/or telephone number of the owner or operator is changed, or requested by the executive director.

(d) Authorization. No person may cause, suffer, allow, or permit any activity of land application for beneficial use of sewage sludge unless such activity has received the prior written authorization of the commission.

Adopted September 28, 2005

Effective October 20, 2005

**§312.5. Relationship to Other Requirements.**

Disposal of sewage sludge or water treatment sludge in a municipal solid waste landfill unit, as defined in 40 Code of Federal Regulations (CFR) §258.2, that complies with the requirements in 40 CFR §257 and §258 constitutes compliance with §405(d) of the Clean Water Act (CWA). Any person who prepares sewage sludge or water treatment sludge that is disposed of in a municipal solid waste landfill unit shall ensure that the sewage sludge or water treatment sludge meets the requirements in 40 CFR §258 concerning the quality of materials disposed of in a municipal solid waste landfill unit. Storage, processing, or disposal of sewage sludge authorized by a permit issued pursuant to §26.027 of the Texas Water Code will not require a separate permit authorization pursuant to this chapter, for the same activities. Sewage sludge or water treatment sludge that is disposed of in a municipal solid waste landfill unit, as defined in 40 CFR §258.2, is not subject to the fee schedules of this chapter.

Adopted September 26, 1995

Effective October 13, 1995

### **§312.6. Additional or More Stringent Requirements.**

On a case-by-case basis, the commission or executive director may impose requirements for the use or disposal of sewage sludge in addition to or more stringent than the requirements in this chapter when necessary to protect public health and the environment from any adverse effect of a pollutant in the sewage sludge.

Adopted September 26, 1995

Effective October 13, 1995

### **§312.7. Sampling and Analysis.**

(a) Representative samples of sewage sludge or domestic septage that is applied to the land, or placed on a surface disposal site shall be collected and analyzed.

(b) Representative samples of sewage sludge fired in a sewage sludge incinerator shall be collected and analyzed.

(c) The following methods, other methods as approved by the executive director, or the latest revision shall be used to analyze samples of sewage sludge or domestic septage.

(1) Enteric viruses, ASTM Method D 4994-89, "Standard Practice for Recovery of Viruses From Wastewater Sludge," Annual Book of ASTM Standards: Section 11, Water and Environmental Technology, 1992.

(2) Fecal coliform, Part 9221 E or Part 9222 D, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(3) Helminth ova, Yanko, W.A., "Occurrence of Pathogens in Distribution and Marketing Municipal Sludges," EPA 600/1-87-014, 1987 NTIS PB 88-154273/AS, National Technical Information Service, Springfield, Virginia.

(4) Inorganic pollutants, Method SW-846 in "Test Methods for Evaluating Solid Waste," U.S. Environmental Protection Agency, November 1986.

(5) Salmonella sp. bacteria, Part 9260 D.1, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(6) Specific oxygen uptake rate, Part 2710 B. "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(7) Total solids, fixed solids, and volatile solids, Part 2540 G, "Standard Methods for the Examination of Water and Wastewater," 18th edition, American Public Health Association, Washington, D.C., 1992.

(8) Percent volatile solids reduction, Percent volatile solids reduction shall be calculated using a procedure in "Environmental Regulations and Technology - Control of Pathogens and Vectors in Sewage Sludge," EPA-625/R-92/013, U.S. Environmental Protection Agency, Cincinnati, Ohio, 1992.

Adopted September 26, 1995

Effective October 13, 1995

### **§312.8. General Definitions.**

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) 25-year, 24-hour rainfall event--The maximum rainfall event with a probable recurrence interval of once in 25 years, with a duration of 24 hours as defined by the National Weather Service in Technical Paper Number 40, Rainfall Frequency Atlas of the United States, May 1961, and subsequent amendments, or equivalent regional or state rainfall information developed from it.

(2) Active sludge unit--A sludge unit that has not closed and/or is still receiving sewage sludge.

(3) **Aerobic digestion**--The biochemical decomposition of organic matter in sewage sludge into carbon dioxide, water, and other by-products by microorganisms in the presence of free oxygen.

(4) **Agricultural land**--Land on which a food crop, a feed crop, or a fiber crop is grown. This includes range land and land used as pasture.

(5) **Agricultural management unit**--A portion of a land application area contained within an identifiable boundary, such as a river, fence, or road, where the area has a known crop or land use history.

(6) **Agronomic rate**--The whole sludge application rate (dry weight basis) designed:

(A) to provide the amount of nitrogen needed by the crop or vegetation grown on the land; and

(B) to minimize the amount of nitrogen in the sewage sludge that passes below the root zone of the crop or vegetation grown on the land to the groundwater.

(7) **Anaerobic digestion**--The biochemical decomposition of organic matter in sewage sludge into methane gas, carbon dioxide, and other by-products by microorganisms in the absence of free oxygen.

(8) **Annual metal loading rate**--The maximum amount of a pollutant (dry weight basis) that can be applied to a unit area of land during a 365-day period.

(9) **Annual whole sludge application rate**--The maximum amount of sewage sludge that can be applied to a unit area of land during a 365-day period.

(10) **Applied uniformly**--Sewage sludge placed on the land for beneficial use such that the agronomic rate is not exceeded anywhere in the application area.

(11) **Apply sewage sludge or sewage sludge applied to the land**--Land application or the spraying/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.

(12) **Aquifer**--A geologic formation, group of geologic formations, or a portion of a geologic formation capable of yielding groundwater to wells or springs.

(13) Base flood--A flood that has a 1% chance of occurring in any given year.

(14) Beneficial use--Placement of sewage sludge onto land in a manner that complies with the requirements of Subchapter B of this chapter (relating to Land Application for Beneficial Use and Storage at Beneficial Use Sites), and does not exceed the agronomic need or rate for a cover crop, or any metal or toxic constituent limitations that the cover crop may have. Placement of sewage sludge on the land at a rate below the optimal agronomic rate will be considered a beneficial use.

(15) Bulk sewage sludge--Sewage sludge that is not sold or given away in a bag or other container for application to the land.

(16) Certified nutrient management specialist--An organization in Texas or an individual who is currently certified as a nutrient management specialist through a United States Department of Agriculture-Natural Resources Conservation Service recognized certification program.

(17) Class A sewage sludge--Sewage sludge meeting the pathogen reduction requirements in §312.82(a)(1)(B) of this title (relating to Pathogen Reduction).

(18) Class AB sewage sludge--Sewage sludge meeting the pathogen reduction requirements in §312.82(a)(1)(A) of this title (relating to Pathogen Reduction).

(19) Class B sewage sludge--Sewage sludge meeting one of the pathogen reduction requirements in §312.82(b) of this title (relating to Pathogen Reduction).

(20) Contaminate an aquifer--To introduce a substance that causes the maximum contaminant level for nitrate in 40 Code of Federal Regulations (CFR) §141.11, as amended, to be exceeded in groundwater or that causes the existing concentration of nitrate in groundwater to increase when the existing concentration of nitrate in the groundwater already exceeds the maximum contaminate level for nitrate in 40 CFR §141.11, as amended.

(21) Cover--Soil or other material used to cover sewage sludge placed on an active sludge unit.

(22) Cover crop--Grasses or small grain crop, such as oats, wheat, or barley, not grown for harvest.

(23) Cumulative metal loading rate--The maximum amount of an inorganic pollutant (dry weight basis) that may be applied to a unit area of land.

(24) Density of microorganisms--The number of microorganisms per unit mass of total solids (dry weight basis) in the sewage sludge.

(25) Displacement--The relative movement of any two sides of a fault measured in any direction.

(26) Disposal--The placement of sewage sludge on the land for any purpose other than beneficial use. Disposal does not include placement onto the land where the activity has been approved by the executive director or commission as storage or temporary storage and it occurs only for the period of time expressly approved.

(27) Domestic septage--Either liquid or solid material removed from a septic tank, cesspool, portable toilet, Type III marine sanitation device, or similar treatment works that receives only domestic sewage. Domestic septage does not include liquid or solid material removed from a septic tank, cesspool, or similar treatment works that receives either commercial wastewater or industrial wastewater and does not include grease removed from a grease trap.

(28) Domestic sewage--Waste and wastewater from humans or household operations that is discharged to a wastewater collection system or otherwise enters a treatment works.

(29) Dry weight basis--Calculated on the basis of having been dried at 105 degrees Celsius until reaching a constant mass (i.e., essentially 100% solids content).

(30) Experimental use--Non-routine beneficial use land application or reclamation projects where sewage sludge is added to the soil for research purposes, in pilot projects, feasibility studies, or similar projects.

(31) Facility--Includes all contiguous land, structures, other appurtenances, and improvements on the land used for the surface disposal, land application for beneficial use, or incineration of sewage sludge.

(32) Fault--A fracture or zone of fractures in any materials along which strata, rocks, or soils on one side are displaced with respect to strata, rocks, or soil on the other side.

(33) Feed crops--Crops produced primarily for consumption by domestic livestock, such as swine, goats, cattle, or poultry.

(34) Fiber crops--Crops such as flax and cotton.

(35) Final cover--The last layer of soil or other material placed on a sludge unit at closure.

(36) Floodway--A channel of a river or watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the surface elevation more than one foot.

(37) Food crops--Crops consumed by humans. These include, but are not limited to, fruits, vegetables, and tobacco.

(38) Forest--Land densely vegetated with trees and/or underbrush.

(39) 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.

(40) Grit trap waste--Waste collected in a grit trap. Grit trap waste includes waste from grit traps 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.

(41) Groundwater--Water below the land surface in the saturated zone.

(42) Harvesting--Any act of cutting, picking, drying, baling, gathering, and/or removing vegetation from a field, or storing.

(43) 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.

(44) Incorporation--Mixing the applied material evenly through the top three inches of soil.

(45) Industrial wastewater--Wastewater generated in a commercial or industrial process.

(46) 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.

(47) 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.

(48) 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.

(49) 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.

(50) 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.

(51) 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.

(52) Liner--Soil or synthetic material that has a hydraulic conductivity of  $1 \times 10^{-7}$  centimeters per second or less. Soil liners must 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 must be a membrane with a minimum thickness of 20 mils and include an underdrain leak detection system.

(53) 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.

(54) Major sole-source impairment zone--A watershed that contains a reservoir that is used by a municipality as a sole source of drinking water supply for a population of more than 140,000, inside and outside of its municipal boundaries; and into which at least half of the water flowing is from a source that, on September 1, 2001, is on the list of impaired state waters adopted by the commission as required by 33 United States Code, §1313(d), as amended, at least in part because of concerns regarding pathogens and phosphorus, and for which the commission at some time prepared and submitted a total maximum daily load standard.

(55) 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).

(56) Monofill--A landfill or landfill trench in which sewage sludge is the only type of solid waste placed.

(57) 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 federal 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 federal Clean Water Act, §201(e), as amended, that has as one of its principal responsibilities the treatment, transport, use, or disposal of sewage sludge.

(58) Off-site--Property that cannot be characterized as "on-site."

(59) 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 must be by crossing the right-of-way or the right-of-way must be under the control of the person.

(60) Operator--The person responsible for the overall operation of a facility or beneficial use site.

(61) 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.

(62) Owner--The person who owns a facility or part of a facility.

(63) Pasture--Land that animals feed directly on for feed crops such as legumes, grasses, grain stubble, forbs, or stover.

(64) Pathogenic organisms--Disease-causing organisms including, but not limited to, certain bacteria, protozoa, viruses, and viable helminth ova.

(65) 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.

(66) Place sewage sludge or sewage sludge placed--Disposal of sewage sludge on a surface disposal site.

(67) 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.

(68) Process or processing--For the purposes of this chapter, these terms shall have the same meaning as "treat" or "treatment."

(69) 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.

(70) Range land--Open land with indigenous vegetation.

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

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

(73) 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.

(74) 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 or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(75) Sewage sludge debris--Solid material such as rubber, plastic, glass, or other trash that 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.

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

(77) Sludge unit--Land that only sewage sludge is placed for disposal. A sludge unit must be used for sewage sludge. This does not include land that sewage sludge is either stored or treated.

(78) Sludge unit boundary--The outermost perimeter of a surface disposal site.

(79) Sole-source surface drinking water supply--A body of surface water that is identified as a public water supply in §307.10 of this title (relating to Appendices A - G) and is the sole source of supply of a public water supply system, exclusive of emergency water connections.

(80) Source-separated organic material--As defined in §332.2 of this title (relating to Definitions).

(81) Specific oxygen uptake rate--The mass of oxygen consumed per unit time per unit mass of total solids (dry weight basis) in the sewage sludge.

(82) Staging--Temporary holding of sewage sludge at a beneficial use site, for up to a maximum of seven calendar days per each staging location, prior to the land application of the sewage sludge.

(83) Store or storage--The placement of sewage sludge on land for longer than seven days.

(84) 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).

(85) Three hundred-sixty-five day period--A running total that covers the period between sludge application to a site and the nutrient uptake of the cover crop.

(86) 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.

(87) 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.

(88) 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.

(89) 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.

(90) Unstabilized solids--Organic materials in sewage sludge that have not been treated in either an aerobic or anaerobic treatment process.

(91) 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 that the soils are subject to mass movement.

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

(93) 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.

(94) 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).

(95) 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.

Adopted September 10, 2014

Effective October 2, 2014

**§312.9. Sludge Fee Program.**

(a) The following words and terms, when used in this section, have the following meanings, unless the context clearly indicates otherwise.

(1) **Annual fee** - A fee charged to each person holding a registration or permit under the commission's authority in Texas Health and Safety Code, Chapter 361, or a permit issued under the commission's authority in 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 that is assessed is determined by weight of solids disposed of and reported to the commission as of September 30, of each year. Failure to report the disposal of sewage sludge or water treatment sludge does not exempt a registrant or permittee from this fee. The fees are 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 for Beneficial Use and Storage at Beneficial Use Sites) the fee is \$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 October 1, 1995, the fee is \$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 is \$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 is \$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 is \$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 Subchapter G of this chapter (relating to Transporters and Temporary Storage Provisions). The amount of the annual fee must 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 are 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) Sludge permit and registration holders shall submit the annual reports in accordance with §312.48(1) of this title (relating to Reporting) no later than September 30 of each calendar year, for a reporting period covering September 1 of the previous calendar year to August 31 of the current calendar year. Fees assessed in subsection (b) of this section must be paid by the registrant or permittee on or before the due date specified in the invoice each year. Fees assessed in subsection (c) of this section must be paid by the registrant after billing by the executive director, prior to September 1, of each year. Fees must be paid by check, certified check, or money order payable to the Texas Commission on Environmental Quality. 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 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 organic material at a composting facility, including a composting facility located at a permitted landfill site. This subsection does not apply if the sludge is not used as compost and is deposited in a surface disposal site or landfill.

(g) Sludge permit holders shall submit permit application fees for Class B sewage sludge.

(1) Any person who applies for a new permit, permit renewal, or permit amendment shall pay a permit application fee. The fees in this subsection relating to application for a permit, permit renewal, or major amendment supercede the fees in §305.53 of this title (relating to Application Fee). An application for a minor amendment or permit transfer must be submitted in accordance with §305.53 of this title. The commission may not consider an application for final decision until such time as the permit application fee is paid. All permit application fees must be made payable to the commission and paid at the time the application for a permit is submitted.

(2) The executive director may not process an application until all delinquent annual fees and delinquent administrative penalties owed the commission by the applicant or for the site as delineated in the permit application are paid in full. Any permittee to whom a permit is transferred shall be liable for payment of the annual fees assessed for the permitted entity/site on the same basis as the transferor of the permit, as well as any outstanding fees and associated penalties owed the commission. If the applicant is not the permittee at the time fees become delinquent or against whom administrative penalties are assessed, the executive director may for good cause waive the applicant's liability under this subsection for payment of delinquent annual fees or delinquent administrative penalties.

(3) An applicant may file a written request for a refund in the amount of 50% of the permit application fee paid if the permit is not issued. No fees will be refunded after a new permit, permit renewal, permit modification, permit amendment, or permit transfer has been issued by the commission. Transfer of a permit will not entitle the transferor permittee to a refund, in whole or part, of any fee already paid by that permittee.

(4) The permit application fees will be between \$1,000 and \$5,000, based on the quantity of sewage sludge to be applied annually under the permit, as shown in the following schedule:

(A) \$1,000, if the quantity is 2,000 dry tons or less;

(B) \$2,000, if the quantity is greater than 2,000 dry tons but less than or equal to 5,000 dry tons;

(C) \$3,000, if the quantity is greater than 5,000 dry tons but less than or equal to 10,000 dry tons;

(D) \$4,000, if the quantity is greater than 10,000 dry tons but less than or equal to 20,000 dry tons; or

(E) \$5,000, if the quantity is greater than 20,000 dry tons.

Adopted September 28, 2005

Effective October 20, 2005

### **§312.10. Permit and Registration Applications Processing.**

(a) Applications for permits, registrations, or other types of approvals required by this subchapter shall be reviewed by staff for administrative completeness within 14 calendar days of receipt of the application by the executive director.

(b) Permit and registration applications must include all information required by §312.11 of this title (relating to Permits), §312.12 of this title (relating to Registrations), or §312.142 of this title (relating to Transporter Registration).

(c) Upon receipt of an application for a permit or registration, excluding transportation registrations, the executive director shall assign the application a number for identification purposes, and prepare a Notice of Receipt of Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permits where applicable, which is suitable for publishing or mailing, and forward that notice to the Office of the Chief Clerk. The Office of the Chief Clerk shall notify every person entitled to notification of a particular application as described in §312.13 of this title (relating to Actions and Notice).

(d) The Notice of Receipt of Application and Declaration of Administrative Completeness for domestic septage registrations or Notice of Receipt of Application and Intent to Obtain Permit for permit where applicable, must contain the information required by Chapter 39 of this title (relating to Public Notice), Texas Water Code,

§5.552(c), and the approximate anticipated date of the first land application of sludge to the proposed land application unit.

(e) Nothing in this section shall be construed so as to waive the notice and processing requirements concerning the application and the draft permit in accordance with Chapter 39, Subchapters H and J of this title (relating to Applicability and General Provisions and Public Notice of Water Quality Applications and Water Quality Management Plans), Chapter 50, Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director), Chapter 55, Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or Contested Case Hearing), or Chapter 305, Subchapters C, D, and F of this title (relating to Application for Permit or Post-Closure Order; Amendments, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits; and Permit Characteristics and Conditions) for applications for sewage sludge land application, processing, disposal, storage, or incineration permits.

(f) All permit applications for sewage sludge land application, processing, disposal, storage, or incineration are subject to the application processing procedures and requirements in §§281.18 - 281.24 of this title (relating to Applications Returned; Technical Review; Extension; Draft Permit, Technical Summary, Fact Sheet, and Compliance History; Referral to Commission; Application Amendment; and Effect of Rules).

(g) All registration applications for Class A sewage sludge, Class AB sewage sludge, water treatment plant sludge, and domestic septage are subject to the application processing procedures and requirements in §§281.18 - 281.20 of this title.

(h) A registration or permit will be cancelled upon receipt of a written request for cancellation from either the site operator or landowner. The executive director will provide notice to the other party that cancellation has been requested and that cancellation will occur ten days from the issuance of notice. This notice is provided merely as a courtesy by the commission and is not mandatory for cancellation.

(i) To transfer a registration or permit, both the site operator and the landowner must sign the transfer application. An application for transfer that is not signed by both the site operator and the landowner will be considered a request for cancellation.

(j) If a registration or permit for a site is cancelled, a complete application for registration or permit must be submitted in order to reauthorize the site. If the application is approved, the site will be authorized under the same site registration or permit number.

(k) For permits, a major amendment is defined in Chapter 305, Subchapter D of this title. For purposes of this chapter concerning registrations and except as provided in subsection (l) of this section, a major amendment for a registration is an amendment that changes a substantive term, provision, requirement, or a limiting parameter of a registration or a substantive change in the information provided in an application for registration. Changes to registrations that are not considered major include, but are not limited to, typographical errors, changes that result in more stringent monitoring requirements, changes in site ownership, changes in site operator, or similar administrative information.

(l) Upon the effective date of this chapter, the executive director will process as a minor amendment a request by an existing permittee or registrant to change any substantive term, provision, requirement, or a limiting parameter in a permit or registration that implemented prior regulations of the commission, when it is no longer a requirement of this chapter. Notice requirements of §312.13 of this title are not applicable to a minor amendment for a registration.

(m) Term limits for registrations or permits may not exceed five years.

Adopted September 10, 2014

Effective October 2, 2014

**§312.11. Permits.**

(a) The provisions of this section set the standards and requirements for permit applications to land apply, process, store, dispose of, or incinerate sewage sludge. Any information provided under this subsection must be submitted in quadruplicate form.

(b) Any person who is required to obtain or who requests a new permit or an amendment, modification, or renewal of a permit under this section is subject to the permit application procedures of §1.5(d) of this title (relating to Records of the Agency), §305.42(a) of this title (relating to Application Required), §305.43 of this title (relating to Who Applies), §305.44 of this title (relating to Signatories to Applications), §305.45 of this title (relating to Contents of Application for Permit), and §305.47 of this title (relating to Retention of Application Data). For a land application permit, the applicant must be:

(1) the owner of the application site, if the sewage sludge was generated outside this state; or

(2) the site operator, if the sewage sludge was generated in this state.

(c) A permit application must include all information in accordance with Chapter 281, Subchapter A of this title (relating to Applications Processing) and Chapter 305,

Subchapter C of this title (relating to Application for Permit or Post-Closure Order), and must also include the following:

(1) the map required by §305.45(a)(6) of this title that provides the following information:

(A) the approximate boundaries of the site to be permitted, which must include all contiguous properties owned by or under the control of the applicant;

(B) the name and mailing address of the owner of each tract of land located:

(i) within 1/4 mile of the site to be permitted, as such information can be determined from the current county tax rolls at the time the application is filed, or other reliable sources, for Class B sewage sludge beneficial land use permit applications submitted on or after September 1, 2003, or applications submitted before September 1, 2003, but not administratively complete by the commission by that date;

(ii) within 1/2 mile of the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources, for a sewage sludge incineration or disposal permit application; and

(iii) adjacent to the site to be permitted, as such information can be determined from the current county tax rolls or other reliable sources, at the time the application is filed for a domestic septage Class B sewage sludge beneficial use land application, or sewage sludge processing or storage facility;

(C) the source(s) of the information for the surrounding property owners; and

(D) the list of property owners. The list must be provided both as a hard copy, either on the map or as an attached list, and in electronic format or on four sets of self-adhesive mailing labels; and

(2) a notarized affidavit from the applicant(s) verifying land ownership of the permitted site or landowner agreement to the proposed activity.

(d) A permit application for land application of Class B sewage sludge must also include the following information:

(1) the information listed in §312.12(b)(1)(A) - (C) of this title (relating to Registrations);

(2) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), based on the following:

(A) samples taken from the zero to six-inch zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) soil samples that accurately show soil conditions in the application area(s) and that are taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample taken from each United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS) soil type (soils with the same characterization or texture), unless an alternate method is used; and

(E) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

(3) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), based on the following:

(A) separate samples taken from the zero to six-inch and from the six to 24-inch zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(B) soil samples that accurately show soil conditions in the application area(s) and that are taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(C) composite samples comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(D) a separate composite sample taken from each USDA NRCS soil type (soils with the same characterization or texture), unless an alternate method is used;

(E) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan also included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

(4) information necessary to identify the hydrological characteristics of the surface water and groundwater within 1/4 mile of the site to be permitted;

(5) except for applications by political subdivisions, proof of a commercial liability insurance policy and an environmental impairment policy or a similar policy in accordance with Chapter 37, Subchapter V of this title (relating to Financial Assurance for Class B Sewage Sludge for Land Application Units); and

(6) proof that the applicant has minimized the risk of water quality impairment caused by nitrogen applied to the land application unit through the application of Class B sewage sludge by having had a nutrient management plan prepared by a certified nutrient management specialist in accordance with the NRCS Practice Standard Code 590.

(e) A permittee of a Class B sewage sludge land application site shall comply with the requirements of Chapter 37, Subchapter V of this title.

(f) Any person who is issued a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the permit characteristics and standards set forth in §305.122 of this title (relating to Characteristics of Permits), §305.123 of this title (relating to Reservation in Granting Permit), §305.124 of this title (relating to Acceptance of Permit, Effect), §305.125 of this title (relating to Standard Permit Conditions), §305.126 of this title (relating to Additional Standard Permit Conditions for Waste Discharge Permits), §305.127 of this title (relating to Conditions to be Determined for Individual Permits), §305.128 of this title (relating to Signatories to Reports), and §305.129 of this title (relating to Variance Procedures).

(g) If any provision of a permit is violated during its term, the permit holder is required to report to the executive director the noncompliance in accordance with Texas Health and Safety Code, §361.121(d)(5) and §305.125(9) of this title. Each permit for the land application of sewage sludge must contain a provision requiring such reporting. Report of such information must be provided orally or by facsimile transmission (fax) to the appropriate regional office within 24 hours of the permit holder becoming aware of the noncompliance. A written submission of such information must also be provided by the permit holder to the regional office and to the Enforcement Division at the commission's Central Office (Mail Code 224) within five working days of becoming

aware of the noncompliance. The written submission must contain the following information:

- (1) a description of the noncompliance and its cause;
  - (2) the potential danger to human health, safety, or the environment;
  - (3) the period of noncompliance, including exact dates and times;
  - (4) if the noncompliance has not been corrected, the anticipated time it is expected to continue; and
  - (5) steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.
- (h) Each sewage sludge land application permit must include a reference to the maximum quantity of sewage sludge that may be land applied under the permit.
- (i) Any permittee who requests a new permit or an amendment, modification, or renewal of a permit to land apply, process, store, dispose of, or incinerate sewage sludge is subject to the standards and requirements for applications and actions concerning amendments, modifications, renewals, transfers, corrections, revocations, denials, and suspensions of permits, as set forth in §305.62 of this title (relating to Amendments), §305.63 of this title (relating to Renewal), §305.64 of this title (relating to Transfer of Permits), §305.65 of this title (relating to Renewal), §305.66 of this title (relating to Permit Denial, Suspension, and Revocation), §305.67 of this title (relating to Revocation and Suspension upon Request or Consent), and §305.68 of this title (relating to Action and Notice on Petition for Revocation or Suspension).
- (j) The permittee shall immediately provide written notice to the executive director of any changes to a permit or to information on soil or subsurface conditions at the site, and provide any additional information concerning changes in land ownership, site control, operator, waste composition, source of sewage sludge, or waste management methods.
- (k) For land application sites located in a major sole-source impairment zone, the permittee is subject to the following provisions.
- (1) The operator shall have a nutrient management plan (nitrogen and phosphorus) prepared by a certified nutrient management specialist in accordance with the USDA NRCS Practice Standard Code 590;

(2) When results of the annual soil analysis for extractable phosphorus indicate a level greater than 200 parts per million of extractable phosphorus (reported as P) in the zero to six-inch sample for a particular land application field or if ordered by the commission in order to protect the quality of water in the state, then the operator may not apply any sewage sludge to the affected area unless the land application is implemented in accordance with a detailed nutrient utilization plan (NUP) that has been approved by the commission.

(3) A NUP is equivalent to the NRCS Nutrient Management Plan Practice Standard Code 590. The nutrient management plan, based on crop removal, must be developed and certified by one of the following individuals or entities:

- (A) an employee of the NRCS;
- (B) a nutrient management specialist certified by the NRCS;
- (C) the Texas State Soil and Water Conservation Board;
- (D) Texas Cooperative Extension;
- (E) an agronomist or soil scientist on full-time staff at an accredited university located in the State of Texas;
- (F) a professional agronomist certified by the American Society of Agronomy;
- (G) a certified professional soil scientist certified by the Soil Science Society of America; or
- (H) a licensed Texas geoscientist-soil scientist, after approval by the executive director based on a determination by the executive director that another person or entity identified in this paragraph cannot develop the plan in a timely manner.

(4) After a NUP is implemented, the operator shall land apply in accordance with the NUP until soil phosphorus is reduced below 200 parts per million in the zero to six-inch sample. Thereafter, the operator shall implement the requirements of the nutrient management plan.

(5) The buffer zones must be maintained according to the applicable requirements specified in §312.44(c) of this title (relating to Management Practices).

**§312.12. Registrations.**

(a) After August 31, 2003, all registrations for the beneficial use of Class B sewage sludge will be void. Registrations for the beneficial use of Class A sewage sludge, water treatment plant sludge, and/or domestic septage will remain valid until they expire, are renewed, are cancelled, or are revoked.

(b) Except as provided in §312.4(b) of this title (relating to Required Authorizations or Notifications), an applicant for a registration to land apply Class A sewage sludge, Class AB sewage sludge, water treatment sludge, and/or domestic septage shall:

(1) submit to the executive director an original, completed application form approved by the executive director, along with the appropriate number of copies of the registration application. Each applicant shall submit to the executive director such information as may reasonably be required to enable the executive director to determine whether such land application for beneficial use activities are compliant with the terms of this chapter. Such information may include, but is not limited to, the following:

(A) a description and composition of the material to be land applied;

(B) a description of all processes generating the material to be land applied at the site;

(C) information about the site and the planned management of the material to be land applied, including the name, address, and telephone number of any landowner or operator at the site and the following information:

(i) whether such material is managed on site and/or off site from its point of generation;

(ii) a description of each on-site land application beneficial use unit or tract, including the name, address, and telephone number of all landowners, or the same information from a landowner acting as a spokesperson(s) for all the landowners, so long as the spokesperson submits to the executive director a sworn statement allowing the spokesperson to act for other persons;

(iii) a listing of the types of material to be land applied managed in each unit or tract;

(iv) a detailed description of the beneficial use occurring at each unit or tract of land where application of Class A or Class AB sewage sludge, water

treatment sludge, and/or domestic septage is proposed, including proposed waste management and crop production methods; and

(v) information regarding soil characteristics and subsurface conditions where the land application site will be located;

(D) the verified legal status of the applicant(s), as applicable;

(E) the notarized signature of each applicant, in accordance with §305.44 of this title (relating to Signatories to Applications);

(F) a notarized affidavit from the applicant(s) verifying land ownership or landowner agreement to the proposed activity;

(G) technical reports and supporting data required by the application;

(H) for applications for major amendments or new registrations, information concerning surrounding landowners, including the following, as applicable:

(i) a map depicting the approximate boundaries of the tract of land owned or under the control of the applicant and each residential or business address and owner of all the tracts of land bordering the perimeter of any portion of the site;

(ii) a list on or attached to the map of the names and addresses of the owners of such tracts of land as can be determined from the current county tax rolls at the time the application is filed, and other reliable sources. The list of property owners must be provided in both hard copy and either in electronic format or on four sets of self-adhesive mailing labels; and

(iii) the source of the information;

(I) analytical results establishing the background soil concentration of metals regulated by this chapter in the application area(s), as applicable, based on the following:

(i) samples taken from the zero to six-inch zone of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) soil samples that accurately show soil conditions in the application area(s) and that are taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample taken from each United States Department of Agriculture (USDA) Natural Resource Conservation Service (NRCS) soil type (soils with the same characterization or texture), unless an alternate method is used;

(v) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan also included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

(J) analytical results establishing the background soil concentration of nutrients, salinity, and pH in the application area(s), as applicable, based on the following:

(i) separate samples taken from the zero to six-inch and from the six to 24-inch zones of soil to be affected by the addition of sewage sludge (including domestic septage);

(ii) soil samples that accurately show soil conditions in the application area(s) and that are taken at a spatial distribution of at least one composite sample per every 80 acres or less of soil type or area being sampled;

(iii) composite samples comprised of ten to 15 samples taken from points randomly distributed across the entire soil type or area(s) being sampled;

(iv) a separate composite sample taken from each USDA NRCS soil type (soils with the same characterization or texture), unless an alternate method is used;

(v) when using an alternate method for defining areas to be sampled such as sampling by agricultural management units or other defined areas, a sampling plan also included in the application, which sufficiently establishes background soil conditions through proportionate sampling of each USDA NRCS soil type in each area sampled;

(K) any information provided under this paragraph submitted to the executive director in quadruplicate form;

(2) immediately provide written notice to the executive director of any changes, requests for an amendment, modification, or renewal of a registration, or any additional information concerning changes in land ownership, changes in site control, or operator, changes in waste composition, changes in the source of sewage sludge, or waste management methods, and information regarding soils and subsurface conditions where the operation is to be located. Any information provided under this paragraph must be submitted to the executive director in duplicate form.

(c) The executive director shall determine, after review of any application, whether to approve or deny an application in whole or in part, deny with prejudice, suspend the authority to conduct an activity for a specified period of time, or amend or modify the proposed activity requested by the applicant. The determination of the executive director shall include review and action on any new applications or changes, renewals, and requests for major amendment of any existing application. In consideration of such an application, the executive director shall consider all relevant requirements of this chapter and consider all information pertaining to those requirements received by the executive director regarding the application. The written determination on any application, including any authorization granted, shall be mailed to the applicant upon the decision of the executive director.

(d) At the same time that the executive director's decision is mailed to the applicant, notice of this decision must also be mailed to all parties who submitted written information on the application, as described in §312.13(c)(2) and (3) of this title (relating to Actions and Notice).

(e) For registered land application sites located in a major sole-source impairment zone, the registrant must comply with the provisions listed in §312.11(k) of this title (relating to Permits).

Adopted September 28, 2005

Effective October 20, 2005

### **§312.13. Actions and Notice.**

(a) Applicability. This section sets forth the manner in which action will be taken on applications filed with the executive director for either a permit or a registration to land apply, store, process, dispose of, or incinerate sewage sludge.

(b) Permit actions.

(1) All permit applications are subject to the standards and requirements as set forth in Chapter 39, Subchapters H - J of this title (relating to Applicability and General Provisions; Public Notice of Solid Waste Applications; and Public Notice of Water Quality Applications and Water Quality Management Plans), Chapter 50,

Subchapters E - G of this title (relating to Purpose, Applicability, and Definitions; Action by the Commission; and Action by the Executive Director), and Chapter 55, Subchapters D - F of this title (relating to Applicability and Definitions; Public Comment and Public Meetings; and Requests for Reconsideration or Contested Case Hearing).

(2) For disposal and incineration permit applications, notice must be provided to all owners of properties within 1/2 mile of the border of any portion of the tract of land where the permitted activities would occur. For beneficial use (excluding Class B sewage sludge), processing, and storage permit applications, notice must be provided to all owners of properties adjacent to any portion of the tract of land where the permitted activities will occur. The tract of land includes all contiguous properties under the ownership or control of the applicant.

(3) For Class B sewage sludge beneficial land use permit applications:

(A) notice must be provided under Chapter 39 of this title (relating to Public Notice) and under Texas Water Code, §5.552. The notice must also contain the anticipated date of the first land application of sludge to the proposed land application unit. An applicant for a new permit, permit amendment, or permit renewal under Texas Health and Safety Code, §361.121(c), shall notify by registered or certified mail each owner of land located within 1/4 mile of the proposed land application unit who lives on that land; and

(B) an owner of the land located within 1/4 mile of the proposed land application unit who lives on the land is considered an "affected person" for purposes of Texas Water Code, §5.115, and Chapter 55 of this title (relating to Requests for Reconsideration and Contested Case Hearings; Public Comment). Individuals who do not own land within 1/4 mile of the proposed land application site are not excluded from being considered "affected persons" under §55.203 of this title (relating to Determination of Affected Person).

(c) Registration actions.

(1) The public notice requirements of this subsection apply to new applications for a registration, and to applications for major amendment of a registration. The requirements of this subsection do not apply to sites where only Class A or Class AB sewage sludge that has been authorized for marketing and distribution is to be land applied for beneficial use or registrations for water treatment sludge.

(2) The Office of the Chief Clerk shall mail the Notice of Receipt of Application and Declaration of Administrative Completeness along with a copy of the registration application to the county judge in the county where the proposed site is to be located.

(3) The Office of the Chief Clerk shall mail the Notice of Receipt of Application and Declaration of Administrative Completeness to the landowners named on the application map or supplemental map, or the sheet attached to the application map or supplemental map.

(4) Each notice must specify both the name, affiliation, address, and telephone number of the applicant and of the commission employee who may be reached to obtain more information about the application to register the site. The notice must specify that the registration application has been provided to the county judge and that it is available for review by interested parties.

(5) Any application for a registration is subject to the standards and requirements for actions concerning amendments, modifications, transfers, and renewals of registrations, as set forth in Chapter 50, Subchapter G of this title.

(d) Public comment on registrations. A person may provide the commission with written comments on any new or major amendment applications to register a site, where applicable. The executive director shall review any written comments when they are received within 30 days of mailing the notice. The written information received will be utilized by the executive director in determining what action to take on the application for registration in accordance with §312.12(c) of this title (relating to Registrations).

(e) Motion to overturn. The applicant, public interest counsel, or other person may file with the chief clerk a motion to overturn under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision) to overturn the executive director's final approval or denial of an application.

Adopted September 10, 2014

Effective October 2, 2014

**Disposition Table**  
**Rule Log No. 96170-050-AD**  
**Hearings Requests/Procedural Rules**  
**Adopted April 16, 1997**  
**Effective May 15, 1997**

**Chapter 312 - Sludge Use, Disposal, and Transportation**  
**Subchapter A: General Provisions**

This table is to track section during and after rule revisions. The column on the left lists the current sections before the revision. The column on the right lists where the section is located after adoption.

<b>Old Section</b>	<b>New Section</b>
312.13 (e)	Repealed portion; see 50.39