

TEXAS COMMISSION ON ENVIRONMENTAL QUALITY
AGENDA ITEM REQUEST
for Proposed Rulemaking

AGENDA REQUESTED: February 8, 2012

DATE OF REQUEST: January 20, 2012

INDIVIDUAL TO CONTACT REGARDING CHANGES TO THIS REQUEST, IF NEEDED: Bruce McAnally, (512) 239-2124

CAPTION: Docket No. 2011-1064-RUL. Consideration for publication of, and hearing on, the proposed amendments to Sections 285.11 and 285.21 and new Section 285.38 of 30 TAC Chapter 285, On-Site Sewage Facilities.

The proposed rulemaking would implement House Bill (HB) 2694, 82nd Legislature, 2011, Regular Session. HB 2694 abolished the Texas On-Site Wastewater Treatment Research Council (Council). This rulemaking will remove references to the Council from Chapter 285. The proposed rulemaking would also implement HB 240, 82nd Legislature, 2011, Regular Session. This rulemaking will require all On-Site Sewage Facilities, including risers and covers, installed after September 1, 2012, to be designed to prevent access by anyone other than the system's owner and licensed OSSF installers or maintenance providers. (Candy Garrett, Kathy Humphreys) (Rule Project No. 2011-040-285-CE)

Richard A. Hyde, P.E.

Deputy Director

Richard C. Chism

Division Director

Bruce McAnally

Agenda Coordinator

Copy to CCC Secretary? NO YES X

Texas Commission on Environmental Quality

Interoffice Memorandum

To: Commissioners **Date:** January 20, 2012

Thru: Bridget Bohac, Chief Clerk
Mark R. Vickery, P.G., Executive Director

From: Richard A. Hyde, P.E., Deputy Director
Office of Compliance and Enforcement

Docket No.: 2011-1064-RUL

Subject: Commission Approval for Proposed Rulemaking
Chapter 285, On-Site Sewage Facilities
HB 2694 (8.01 - 8.06) and HB 240: TOWTRC/Repeal, Funding & Fee
Rule Project No. 2011-040-285-CE

Background and reason(s) for the rulemaking:

The TCEQ Sunset legislation, House Bill (HB) 2694, 82nd Legislature, 2011, was authored by Representative Wayne Smith and sponsored by Senator Joan Huffman.

HB 2694 abolished the Texas On-Site Wastewater Treatment Research Council (Council), transferring its duties and responsibilities to the Texas Commission on Environmental Quality. The Council is referred to in 30 Texas Administrative Code §285.11(b) and §285.21(b). Replacing the references to Council with "commission" will clarify the responsibility for the collection of fees for the research program.

HB 240, 82nd Legislature, 2011, was authored Representative Tan Parker and sponsored by Senator Jane Nelson.

HB 240 requires that new On-Site Sewage Facilities (OSSF) installed after September 1, 2012, be designed to prevent accidental or unintentional access to the OSSF. This change addresses a concern that the accidental or unintentional removal of a septic tank lid might contribute to harmful or fatal accidents involving individuals accessing and then falling into septic tanks.

Scope of the rulemaking:

A.) Summary of what the rulemaking will do:

The proposed rulemaking replaces two references to the Council with the commission.

The proposed rulemaking will require new OSSFs installed after September 1, 2012, to include a mechanism to prevent accidental or unintentional access to the system, including risers, and covers. The proposed standards are consistent with the NSF International (formerly known as the National Sanitation Foundation) standards for access ports for OSSFs. The proposed rulemaking includes the authority for the executive director to

Re: Docket No. 2011-1064-RUL

approve new technology. The proposed rulemaking includes requirements that are needed to address Texas specific concerns such as parts that are resistant to ultraviolet (UV) damage.

B.) Scope required by federal regulations or state statutes:

There are no federal regulations related to the proposed rulemaking.

Texas Health and Safety Code (THSC), Chapter 367 authorized the Council. HB 2694 sunsetted the Council. Currently, §285.11(b) and §285.21(b) refer to the Council.

THSC, Chapter 366 contains the requirements for OSSFs. HB 240 requires that new OSSFs designed or installed after September 1, 2012, be designed to prevent accidental or unintentional access to the OSSF.

C.) Additional staff recommendations that are not required by federal rule or state statute:

Staff recommends adopting the NSF International standards and allowing the executive director to approve alternative methods on a case-by-case basis. Allowing the executive director the authority to approve alternate methods will encourage innovation and flexibility in meeting the requirements at the lowest price to OSSF owners.

Staff also recommends the approval of the following items in addition to the NSF International standards, to address concerns presented by stakeholders:

- components that are UV protected;
- a requirement that inspection reports include documentation that access to the OSSF was secured after maintenance and inspections;
- clarifies that installation of a riser is considered construction and must be performed by a licensed installer; and
- clarifies that pumpers can access OSSFs to perform maintenance.

Statutory authority:

- THSC, §366.001, §366.011, §366.012, §367.001, §367.007, §367.008, §367.009, and §367.010
- Texas Water Code (TWC), §5.013, §5.103, and §5.105

Effect on the:

A.) Regulated community:

Re: Docket No. 2011-1064-RUL

OSSF Installers and Maintenance Providers will be impacted. Installers will be required to provide approved devices on newly installed OSSFs after September 1, 2012. The regulated community will pay for the devices and ultimately pass those costs on to the OSSF purchaser.

Specialized tools may be necessary for Installers and Maintenance providers in order to access OSSF depending on the type of restrictive device used. The costs of the tools are anticipated to be minimal and passed on to the OSSF owner.

B.) Public:

OSSF owners will benefit from additional safeguards to prevent unintentional access to the septic tank. The financial impact to the OSSF owner is expected to be \$25.00 to \$100.00 at the time of the initial installation. The cost of maintenance should be minimally impacted since a special tool used to access the OSSF could be used at multiple residences for many years.

C.) Agency programs:

The OSSF program will update the agency's website to include the new requirements. The program will provide information on the listserv and at training events over the next year. The program is working with trade associations to include information on the requirements in upcoming newsletters.

Revenues from the OSSF Permit Fee, formerly for the Council, will now be available to the commission, as appropriated. TCEQ staff will now deposit these revenues in the Water Resources Management Account 153, rather than General Revenue.

Stakeholder meetings:

A stakeholders' meeting was held on September 27, 2011. A notice was posted on the agency's website. Eight people attended the stakeholders' meeting representing OSSF manufacturers, installers, county agents responsible for implementing the requirements, and a trade association.

The stakeholders expressed concern that the proposed rulemaking addressed only new installations and did not include existing OSSFs. Stakeholders expressed concern that pumpers could fail to properly secure the system after pumping activities. Stakeholders also expressed concern that homeowners could use unacceptable mechanisms to make maintenance easier or fail to properly secure the system after performing maintenance. Stakeholders also expressed concern that there should be increased enforcement against unlicensed individuals performing OSSF activities.

Re: Docket No. 2011-1064-RUL

The stakeholders were generally supportive of using the NSF International standards, with an allowance for the executive director to approve innovative technology. The stakeholders also recommended some additional items, such as having materials be UV resistant.

The additional items recommended are:

- requiring that risers be the same size or larger than the inspection or cleanout port it will cover;
- requiring that risers must be permanently fastened to the tank lid or into the tank;
- requiring that the riser and tank lid must be watertight;
- requiring that risers must be able to withstand any pressure created by the surrounding soil;
- clarifying that installation of a riser must be performed by a licensed installer;
- requiring any person accessing a secured lid or cover on an OSSF to secure the lid or cover when access is completed; and
- requiring inspection reports to note that access to the OSSF was secured after the maintenance or inspection was completed.

Prior to the stakeholder meeting former members of the Council expressed concern that the research function would not continue under TCEQ's stewardship. Some members expressed concern that the fee was being collected for research activities but had not been appropriated to the agency for continuing the research program.

Potential controversial concerns and legislative interest:

Collection of OSSF Permit Fee continues even though the legislature did not appropriate funding for the grant program for the 2012-2013 biennium.

Will this rulemaking affect any current policies or require development of new policies?

The rulemaking will not affect any current policies and will not require the development of new policies.

What are the consequences if this rulemaking does not go forward? Are there alternatives to rulemaking?

If the rulemaking does not go forward, the agency will not be in compliance with the Sunset legislation relating to the Council and will not have rules requiring OSSFs to be designed to prevent accidental or unintentional access to the system.

There are no alternatives to rulemaking.

Key points in the proposal rulemaking schedule:

Anticipated proposal date: February 8, 2012

Commissioners
Page 5
January 20, 2012

Re: Docket No. 2011-1064-RUL

Anticipated *Texas Register* publication date: February 24, 2012

Public hearing date (if any): March 21, 2012

Public comment period: March 26, 2012

Anticipated adoption date: July 25, 2012

Agency contacts:

Candy Garrett, Rule Project Manager, 239-1457, Field Operations Support Division

Kathy Humphreys, Staff Attorney, 239-3417

Diane Mazuca, Executive Director's Office, 239-3504

Bruce McAnally, Texas Register Coordinator, 239-2141

Attachments

HB 2694, Article 8

HB 240

cc: Chief Clerk, 2 copies
Executive Director's Office
Susana M. Hildebrand, P.E.
Anne Idsal
Curtis Seaton
Ashley Morgan
Office of General Counsel
Candy Garrett
Bruce McAnally

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes amendments to §285.11 and §285.21; and proposes new §285.38.

Background and Summary of the Factual Basis for the Proposed Rules

In 2011, the 82nd Legislature passed House Bill (HB) 2694, relating to the continuation and functions of the TCEQ. The changes in law became effective September 1, 2011. HB 2694, Article 8, abolished the Texas On-Site Wastewater Treatment Research Council (Council) and transferred the Council's research responsibilities to the commission. The 82nd Legislature also passed HB 240, which requires that all on-site sewage facilities (OSSFs), including risers and covers, installed after September 1, 2012, be designed to prevent access to the OSSF by anyone other than the owner of the OSSF, licensed OSSF installers, or licensed OSSF maintenance providers.

This rulemaking would remove references to the Council and provide that the fee previously assessed for the Council will be used for commission OSSF research grants. It would require that OSSFs, including risers and covers, installed after September 1, 2012, be designed to prevent access to the OSSF by anyone other than the owner of the OSSF, licensed OSSF installers, or licensed OSSF maintenance providers. The purpose of the requirement is to prevent the accidental or unintentional removal of an OSSF lid that may contribute to harmful or fatal accidents involving individuals accessing and falling into OSSFs.

Section by Section Discussion

§285.11, General Requirements

The proposal would amend §285.11(b) by replacing the reference to the Council with commission. The Council was abolished by Article 8 of HB 2694. The commission is now responsible for the research function previously performed by the Council. The proposed change in the rule language is legislatively mandated.

§285.21, Fees

The proposal would amend §285.21(b) by replacing the reference to the Council with commission. The Council was abolished by Article 8 of HB 2694. The commission is now responsible for the research function previously performed by the Council. The proposed change in the rule language is legislatively mandated.

§285.38, Prevention of Unauthorized Access to OSSFs

Proposed new §285.38 would incorporate the language in HB 240 that requires all OSSFs, including risers and covers, installed after September 1, 2012, to be designed to prevent accidental or unintentional access to the OSSF by anyone other than the owner of the OSSF, licensed OSSF installers, or licensed OSSF maintenance providers. The proposed rule is based on the NSF International (formerly known as the National Sanitation Foundation) standards for residential wastewater treatment systems. At the request of stakeholders, several items were added to the standards such as: including a mechanism for the executive director to approve innovative technologies that meet the

standards, addressing the Texas climate by requiring materials to be ultraviolet light resistant, and including construction standards for risers and for connecting risers to tanks. The proposed rule requires routine maintenance reports to include the security status of the access port. The proposed rule clarifies that all installations of risers or caps on an OSSF system must be performed by a licensed installer. Although septic tank pumpers were not specifically recognized in HB 240 as needing access to OSSFs, the executive director recognizes that septic tank pumpers need access to OSSFs. This proposed rule does not prohibit access to OSSFs by septic tank pumpers. The proposed rule requires any person that accesses an OSSF to secure the OSSF when access is complete.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Strategic Planning and Assessment Section Analyst, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency or for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules remove references to the Council because HB 2694 abolished the Council and transferred the Council's research responsibilities to the commission. The proposed rules also implement HB 240, which requires that all OSSFs, including risers and covers, installed after September 1, 2012, be designed to prevent access to the OSSF

by anyone other than the owner of the OSSF, licensed OSSF installers, or licensed OSSF maintenance providers.

As of September 1, 2011, the commission assumed all administrative responsibilities previously held by the Council, including all rights and obligations under existing grant agreements and contracts. The proposed rules would provide that OSSF permit fee revenue provided to the Council for research activities will now be collected for use by the commission, as required by statute. OSSF locally authorized agents are currently required to collect a \$10 fee for each OSSF permit. This fee was deposited to the General Revenue Account, to be utilized for the administration of the Council and its responsibilities under statute. Per HB 2694, local authorized agents would continue to collect this fee; however, the fee revenue would now be deposited to the Water Resource Management Account 153 for use by the commission.

Based on the 2011 Comptroller Biennial Revenue Estimate, \$325,000 in 2012 and \$335,000 in 2013 would now be deposited into the Water Resource Management Account instead of the General Revenue Account. This fee revenue must be appropriated to the TCEQ by the legislature before the funds can be used for administration of the former council's duties and responsibilities, including grant awards. The legislature did not appropriate funds in 2012 and 2013 for new grants for on-site sewage research.

The proposed rules implement HB 240, which requires that all OSSF systems, including risers and covers, installed after September 1, 2012, be designed to prevent access to the OSSF by anyone other than the system's owner and licensed OSSF installers or maintenance providers. The purpose of the requirement is to prevent accidental or unintentional access to a septic tank which could result in harmful or fatal accidents.

The proposed rules may increase the agency's workload with regard to the review of proposed systems and may also increase some enforcement activities relating to OSSF systems. However, any additional costs would be absorbed using existing resources. Likewise, local governments such as counties, municipalities, or river authorities who are authorized agents for the OSSF program may see an increase in workload with regard to the review of proposed systems and enforcement activities relating to OSSF systems, but any additional costs are not expected to be significant.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be compliance with state law and enhanced public safety with regard to the operation of OSSF systems.

Fiscal implications are anticipated for businesses and individuals if they design, own, or install a new OSSF system after September 1, 2012. However, these fiscal implications are expected to be minimal.

It is expected that OSSF system owners will have an additional one-time cost of between \$25 and \$100 (for the tank risers and/or covers including the padlock or weighted lid) for new OSSF systems designed and installed after September 1, 2012.

There are approximately 405 OSSF manufacturers and 3,081 OSSF licensed individuals that will be impacted by the proposed rules. Manufacturers will be required to provide OSSFs that meet the minimum requirements. However, according to agency staff, most manufacturers are already producing systems that meet the minimum proposed requirements so fiscal implications are not anticipated for them. Maintenance providers will be required to report the status of the secured access on routine maintenance reports. This additional reporting requirement is not expected to result in significant costs, if any. Maintenance providers and installers may also be required to purchase specialized tools to remove access ports to OSSFs, but again these costs are not anticipated to be significant.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of

the proposed rules. Most OSSF manufacturers and OSSF licensed individuals are anticipated to be small or micro-businesses. In addition, new reporting requirements for routine maintenance or any new special equipment necessary to access ports for maintenance providers or installers is not expected to result in significant costs, if any. Any small or micro-business that designs, owns, or installs a new OSSF system after September 1, 2012 will have an additional one-time cost of between \$25 and \$100 (for the tank risers and/or covers including the padlock or weighted lid) for the new OSSF system.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required by statute and do not adversely affect a small or micro-business in a material way for the first five years that the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "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.

Furthermore, the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 applies only to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds 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; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

This rulemaking would remove references to the Council, and would require that all

OSSFs, including risers and covers, installed after September 1, 2012, be designed to prevent access to the OSSF by anyone other than the owner of the OSSF, licensed OSSF installers, or licensed OSSF maintenance providers; therefore, this rulemaking is not a major environmental rule and does not meet any of the four applicability requirements. The proposed rules should not adversely affect in a material way the economy, a sector of the economy, productivity, competition, or jobs because they reflect only a statement of policy and do not result in any new rights and regulations.

The commission invites public comment regarding this draft regulatory impact analysis determination.

Takings Impact Assessment

The commission's preliminary assessment indicates that Texas Government Code, Chapter 2007, does not apply to the proposed rulemaking because the proposed rulemaking is not a taking as defined in Chapter 2007, nor is it a constitutional taking of private real property. The purpose of the rules is to remove references to the Council and require that all OSSFs, including risers and covers, installed after September 1, 2012, be designed to prevent access to the OSSF by anyone other than the owner of the OSSF, licensed installers or licensed maintenance providers.

Promulgation and enforcement of the proposed rules will not affect private real

property, which is the subject of the rules, because the proposed rulemaking will neither restrict or limit the owner's right to the property, nor cause a reduction of 25% or more in the market value of the property. The proposed rules only apply to the participation of the public interest counsel in commission proceedings. Property values will not be decreased, because the proposed rulemaking will not limit the use of real property. Thus, the proposed rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found the proposal is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(4), concerning rules subject to the Texas Coastal Management Program (CMP), and will, therefore, require that goals and policies of the CMP be considered during the rulemaking process. The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking is editorial and procedural in nature and will have no substantive effect on commission actions subject to the CMP and is, therefore, consistent with CMP goals and policies.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this

preamble.

Announcement of Hearing

A public hearing on this proposal will be held in Austin on March 21, 2012, at 2:00 p.m. at the Texas Commission on Environmental Quality complex located at 12100 Park 35 Circle in Building B, Room 201A. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services, at (512) 239-1802. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Bruce McAnally, MC 205, Office of Legal Services, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808.

Electronic comments may be submitted at

<http://www5.tceq.state.tx.us/rules/ecomments/>. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference

Rule Project Number 2011-040-285-CE. The comment period closes March 26, 2012.

Copies of the proposed rule can be obtained from the commission's Web site at

http://www.tceq.state.tx.us/nav/rules/propose_adopt.html. For further information,

please contact Candy Garrett, Field Operations Support Division, (512) 239-1457.

SUBCHAPTER B: LOCAL ADMINISTRATION OF THE OSSF PROGRAM

§285.11

Statutory Authority

The amendment is proposed under the authority granted to the commission by the legislature in Texas Health and Safety Code (THSC), §366.001, which provides the commission with the authority to regulate On-site Sewage Facilities (OSSF) and collect fees and penalties for OSSFs; THSC, §366.011, which provides the commission or authorized agents general authority over OSSFs; THSC, §366.012, which provides the commission with authority to adopt rules governing OSSFs; THSC, §367.008, which authorizes the commission to award competitive grants for OSSF research; THSC, §367.009, which requires certain fees be used for competitive grants for OSSF research; and THSC, §367.010, which provides that fees from OSSF permit applications shall be deposited to the credit of the water resources management account.

The amendment is also proposed under the general authority granted in Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; and TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties.

The proposed amendment implements House Bill 2694 (Article 8), 82nd Legislature, 2011; and THSC, §§285.11, 367.001, 367.007, 367.008, 367.009, and 367.010.

§285.11. General Requirements.

(a) General Administrative Requirements for Authorized Agents. On-site sewage facility (OSSF) [OSSF] permitting, construction, and inspection requirements are in §285.3 of this title (relating to General Requirements).

(b) Fees. The OSSF permit and inspection fees will be set by the authorized agent. Additionally, a fee of \$10 shall be assessed for each OSSF permit for the commission [On-Site Wastewater Treatment Research Council] as required in the Texas Health and Safety Code, Chapter 367.

(c) Complaints. The authorized agent shall investigate all complaints within 30 days after receipt. After completing the investigation, the authorized agent shall take appropriate and timely action according to §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs).

(d) Appeals. Appeals of an authorized agent's decision will be made through the appeal procedures stated in the authorized agent's order, ordinance, or resolution.

(e) Authorized Agents Reporting Requirements.

(1) The authorized agent shall notify the executive director, in writing, of any change of the designated representative within 30 days after the date of the change.

(2) Each authorized agent shall provide to the executive director an OSSF monthly activity report on the form provided by the executive director, within ten days after the end of the month.

**SUBCHAPTER C: COMMISSION ADMINISTRATION OF THE OSSF
PROGRAM IN AREAS WHERE NO AUTHORIZED AGENT EXISTS**

§285.21

Statutory Authority

The amendment is proposed under the authority granted to the commission by the legislature in Texas Health and Safety Code (THSC), §366.001, which provides the commission with the authority to regulate On-site Sewage Facilities (OSSF) and collect fees and penalties for OSSFs; THSC, §366.011, which provides the commission or authorized agents general authority over OSSFs; THSC, §366.012, which provides the commission with authority to adopt rules governing OSSFs; THSC, §367.008, which authorizes the commission to award competitive grants for OSSF research; THSC, §367.009, which requires certain fees be used for complete grants for OSSF research; and THSC, §367.010, which provides that fees from OSSF permit applications shall be deposited to the credit of the water resources management account.

The amendment is also proposed under the general authority granted in Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; and TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties.

The proposed amendment implements House Bill 2694 (Article 8), 82nd Legislature, 2011; and THSC, §§285.21, 367.001, 367.007, 367.008, 367.009, and 367.010.

§285.21. Fees.

(a) The application fee for an on-site sewage facility (OSSF) [OSSF] permit is:

(1) \$200 for an OSSF serving a single family dwelling; or

(2) \$400 for all other types of OSSFs.

(b) A fee of \$10 shall also be collected for each OSSF permit for the commission [On-Site Wastewater Treatment Research Council] as required by the Texas Health and Safety Code, Chapter 367.

(c) The fees are payable when the owner, or owner's agent, applies to the executive director for an OSSF permit. The fee shall be submitted to the appropriate regional office and shall be paid by a money order or check. Payments shall be made payable to the Texas Commission on Environmental Quality.

(d) The re-inspection fee shall be equal to one-half of the permit fee that was in effect at the time the original application was submitted to the regional office.

(e) Refunds of the application fee shall not be granted.

SUBCHAPTER D: PLANNING, CONSTRUCTION, AND INSTALLATION
STANDARDS FOR OSSFS

§285.38

Statutory Authority

The new section is proposed under the authority granted to the commission by the legislature in Texas Health and Safety Code (THSC), §366.001, which provides the commission with the authority to regulate On-site Sewage Facilities (OSSF) and collect fees and penalties for OSSFs; THSC, §366.011, which provides the commission or authorized agents general authority over OSSFs; and THSC, §366.012, which provides the commission with authority to adopt rules governing OSSFs.

The new section is also proposed under the general authority granted in Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under TWC and other laws of the state; and TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties.

The proposed new section implements House Bill 240, 82nd Legislature, 2011; and THSC, §§366.001, 366.011, and 366.012.

§285.38. Prevention of Unauthorized Access to On-Site Sewage Facilities (OSSFs).

(a) Applicability.

(1) The construction criteria under this subsection applies to:

(A) pretreatment (trash) tanks referenced in §285.32(b)(1)(G) of this title (relating to Criteria for Sewage Treatment Systems);

(B) proprietary treatment units referenced in §285.32(c) of this title;

(C) non-standard treatment units referenced in §285.32(d) of this title;

(D) pump tanks referenced in §285.34(b) of this title (relating to Other Requirements); and

(E) holding tanks referenced in §285.34(e) of this title.

(2) The construction criteria found in this subsection is in addition to the construction criteria in §285.32 of this title.

(b) All tanks must have inspection or cleanout ports located on the tank top over all inlet and outlet devices. Each inspection or cleanout port must be offset to allow for pumping of the tank. The ports may be configured in any manner as long as the smallest dimension of the opening is at least 12 inches, and is large enough to provide for maintenance and equipment removal. Inspection and cleanout ports shall have risers over the port openings which extend to the ground surface. When a riser is installed, a secondary plug, cap, or other suitable restraint system shall be provided below the riser cap to prevent tank entry if the cap is unknowingly damaged or removed.

(c) Risers.

(1) The risers shall have inside diameters which are equal to or larger than the inspection or cleanout ports.

(2) Risers must be permanently fastened to the tank lid or cast into the tank. The connection between the riser and the tank lid must be watertight.

(3) Risers must be fitted with removable watertight caps and protected against unauthorized intrusions. Acceptable protective measures include:

(A) a padlock;

(B) a cover that can be removed only with specialized tools;

(C) a cover having a minimum net weight of 29.5 kilograms (65 pounds); or

(D) any other means approved by the executive director.

(4) Risers and riser caps exposed to sunlight must have ultraviolet light protection.

(5) Risers must be able to withstand the pressures created by the surrounding soil.

(d) Installation of a riser to any component of an OSSF is considered construction under this chapter and must be performed by a licensed installer.

(e) Installation of risers for OSSF components installed on or prior to September 1, 2012, are considered an emergency repair as described in §285.35 of this title (relating to Emergency Repairs).

(f) Any person who accesses any secured lid(s) or cover(s) on an OSSF shall secure the lid(s) or cover(s) when access is complete.

(g) All inspection reports sent to Authorized Agents, Regional Offices, and homeowners must document that the access to the OSSF inspection and cleanout ports was secured after the maintenance or inspection activities were completed.

ARTICLE 8. ABOLITION OF THE ON-SITE WASTEWATER TREATMENT
RESEARCH COUNCIL

SECTION 8.01. The heading to Chapter 367, Health and Safety Code, is amended to read as follows:

CHAPTER 367. ON-SITE WASTEWATER TREATMENT RESEARCH [~~COUNCIL~~]

SECTION 8.02. Section 367.001, Health and Safety Code, is amended to read as follows:

Sec. 367.001. DEFINITIONS. In this chapter:

(1) "Commission" means the Texas Commission on Environmental Quality [~~Natural Resource Conservation Commission~~].

(2) [~~"Council" means the On-site Wastewater Treatment Research Council.~~]

[~~(3)~~] "On-site wastewater treatment system" means a system of treatment devices or disposal facilities that:

(A) is used for the disposal of domestic sewage, excluding liquid waste resulting from the processes used in industrial and commercial establishments;

(B) is located on the site where the sewage is produced; and

(C) produces not more than 5,000 gallons of waste a day.

SECTION 8.03. Section 367.007, Health and Safety Code, is amended to read as follows:

Sec. 367.007. ADMINISTRATION. (a) ~~[The council is not an advisory body to the commission. The commission, at the direction of the council, shall implement council decisions.]~~

~~[(b) The council may enter into an interagency contract with the commission to provide staff and other administrative support as required to improve the quality of wastewater treatment and reduce the cost of providing wastewater treatment to consumers.]~~

~~[(c)]~~ The commission ~~[council]~~ may accept grants and donations from other sources to supplement the fees collected under Section 367.010. Grants and donations shall be deposited to the credit of the water resource management ~~[on-site wastewater treatment research]~~ account and may be disbursed as the commission ~~[council]~~ directs and in accordance with Section 367.008.

(b) ~~[(d)]~~ Administrative and facilities support costs are payable from the water resources management ~~[on-site wastewater treatment research]~~ account.

~~[(c) The council may award grants and enter into contracts in its own name and on its own behalf.]~~

SECTION 8.04. Section 367.008, Health and Safety Code, is amended to read as follows:

Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The commission ~~[council]~~ shall establish procedures for awarding

competitive grants and disbursing grant money.

(b) The commission [~~council~~] may award competitive grants to:

(1) support applied research and demonstration projects by accredited colleges and universities in this state, by other governmental entities, or by acceptable public or private research centers regarding on-site wastewater treatment technology and systems applicable to this state that are directed toward improving the quality of wastewater treatment and reducing the cost of providing wastewater treatment to consumers; and

(2) enhance technology transfer regarding on-site wastewater treatment by using educational courses, seminars, symposia, publications, and other forms of information dissemination.

(c) The commission shall seek the advice of relevant experts when choosing research topics, awarding grants, and holding educational conferences associated with activities under this chapter. [~~The council may award grants or make other expenditures authorized under this chapter only after the comptroller certifies that the on-site wastewater treatment research account contains enough money to pay for those expenditures.~~]

SECTION 8.05. Section 367.009, Health and Safety Code, is

amended to read as follows:

Sec. 367.009. APPROPRIATIONS. Money collected and appropriated for the purposes of this chapter shall be disbursed as the commission [~~council~~] directs and in accordance with Section 367.008.

SECTION 8.06. Section 367.010(d), Health and Safety Code, is amended to read as follows:

(d) The fee proceeds shall be deposited to the credit of the water resources management [~~on-site wastewater treatment research~~] account.

SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005, 367.006, and 367.011, Health and Safety Code, are repealed.

SECTION 8.08. (a) On the effective date of this Act, the Texas Commission on Environmental Quality shall assume the administration of all grants of the On-site Wastewater Treatment Research Council in existence on that date.

(b) The Texas Commission on Environmental Quality shall assume all contracts held by the On-site Wastewater Treatment Research Council on the effective date of this Act, including all rights and obligations associated with the contracts.

AN ACT

1
2 relating to requiring the Texas Commission on Environmental Quality
3 to adopt rules preventing access to on-site sewage disposal
4 systems.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 366.012(a), Health and Safety Code, is
7 amended to read as follows:

8 (a) To assure the effective and efficient administration of
9 this chapter, the commission shall:

10 (1) adopt rules governing the installation of on-site
11 sewage disposal systems, including rules concerning the:

12 (A) review and approval of on-site sewage
13 disposal systems; and

14 (B) temporary waiver of a permit for an emergency
15 repair; and

16 (2) adopt rules under this chapter that:

17 (A) encourage the use of economically feasible
18 alternative techniques and technologies for on-site sewage
19 disposal systems that can be used in soils not suitable for
20 conventional on-site sewage disposal; ~~and~~

21 (B) address the separation of graywater, as
22 defined by Section 341.039, in a residence served by an on-site
23 sewage disposal system; and

24 (C) require on-site sewage disposal systems,

1 including risers and covers, installed after September 1, 2012, to
2 be designed to prevent access to the system by anyone other than:

3 (i) the owner of the system; or

4 (ii) a person described by Section
5 366.071(a) or (b).

6 SECTION 2. This Act takes effect September 1, 2011.

President of the Senate

Speaker of the House

I certify that H.B. No. 240 was passed by the House on April 21, 2011, by the following vote: Yeas 148, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 240 on May 21, 2011, by the following vote: Yeas 140, Nays 1, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 240 was passed by the Senate, with amendments, on May 19, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor