

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §285.1, Purpose and Applicability; §285.2, Definitions; §285.30, Site Evaluation; §285.50, General Requirements; §285.62, Duties and Responsibilities of Designated Representatives; §285.63, Duties and Responsibilities of Registered Apprentices; §285.71, Authorized Agent Enforcement of OSSFs; and §285.91, Tables. The commission also adopts the repeal of §285.51, Exceptions to Licensing Requirements; §285.52, Administration; §285.53, Qualifications; §285.54, Basic Training and Continuing Education; §285.55, Examinations; §285.56, Applications for License; §285.57, Registration of Apprentices; §285.58, Applications for Renewal; §285.59, Conditions for Denial of License, Registration, or Renewal; §285.60, Terms and Fees; §285.64, Denial, Reprimand, Suspension, or Revocation of License or Registration; and §285.65. In addition, the commission adopts new §285.60, Duties and Responsibilities of Site Evaluators and §285.64, Suspension or Revocation of License or Registration.

Sections 285.2, 285.60, and 285.64 are adopted *with changes* to the proposed text as published in the September 28, 2001, issue of the *Texas Register* (26 TexReg 7468). Sections 285.1, 285.30, 285.50, 285.62, 285.63, 285.71, and 385.91; and the repeal of §§285.51 - 285.60, 285.64, and 285.65 are adopted *without changes* and will not be republished.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED RULES

The amendments to Chapter 285 are to implement new requirements in Texas Water Code (TWC), Chapter 37, which was created by House Bill (HB) 3111 of the 77th Legislature, 2001. Texas Water Code, Chapter 37, requires the commission to consolidate administrative requirements and establish

uniform procedures for the occupational licensing and registration programs administered by the commission and to establish rules for the occupational licensing programs by December 1, 2001. To achieve this, the commission adopts new 30 TAC Chapter 30, Occupational Licenses and Registrations, to consolidate the administrative requirements for the ten licensing and registration programs administered in the Compliance Support Division (CSD). The adoption of Chapter 30 is concurrently published in this issue of the *Texas Register*.

The commission adopts these amendments to Chapter 285 because the licensing requirements for installers and designated representatives and the registration of apprentices are being moved to the new Chapter 30. Chapter 30 will establish uniform procedures for issuing and renewing licenses, setting terms and fees, enforcement activities, and training approval for all of the licensing programs managed by the CSD. The remaining sections in Chapter 285 specify the minimum standards for the planning and construction of an on-site sewage facility (OSSF), define the systems that are acceptable for use, specify requirements for the proper maintenance and operation of these systems, and specify the requirements and procedures for permitting systems. Senate Bill (SB) 405 of the 77th Legislature, 2001, also provides an exemption for licensing requirements for geoscientists, which is adopted in these rules. Additionally, some amendments are adopted in Chapter 285 to reference the licensing requirements in Chapter 30 and to correct some minor errors in Chapter 285.

SECTION BY SECTION DISCUSSION

Subchapter A - General Provisions

Section 285.1 and §285.2 are amended in Subchapter A to incorporate the provisions of HB 3111, and to provide a reference to licensing requirements that are adopted and moved from Chapter 285 to Chapter 30.

Section 285.1, Purpose and Applicability, is amended to delete the language “licensing of installers and designated representatives, registration of apprentices, and” since these procedures are no longer included in this chapter. Language is added to indicate that the licensing of installers, designated representatives, and site evaluators and the registration of apprentices is included in Chapter 30. The licensing procedures are moved to Chapter 30.

Adopted amendments to §285.2, Definitions, provide a reference to licensing requirements that are moved from Chapter 285 to Chapter 30 and one new definition. Adopted amendments revise two existing definitions, and delete three definitions that are now defined in Chapter 30. A new definition is adopted for “site evaluator” to incorporate the language from TWC, Chapter 37. Since publication of the proposed rules and in response to comments received, the commission has amended the definition for “site evaluator” to delete the phrase “holds a professional engineer license” and added “a professional engineer may perform site evaluations without obtaining a site evaluator license” to clarify that a licensed professional engineer may perform site evaluations without obtaining a site evaluator license. Amendments to the definitions for “apprentice” and “designated representative” are adopted. The commission adopts the definition for “apprentice” as amended to reference the licensing procedures in Chapter 30. The commission adopts the definition for “designated representative” as amended to reference the licensing procedures in Chapter 30 and to incorporate the changes in the definition of

“designated representative” that were made in TWC, Chapter 37. The definitions for “certificate of registration,” “license,” and “revocation” are deleted since these words, terms, or phrases are now defined in Chapter 30. The definitions are renumbered due to the addition and deletion of terms.

Subchapter D - Planning, Construction, and Installation Standards for OSSFs

Section 285.30, Site Evaluation, is amended to add the requirement that a site evaluation must be performed by either a licensed site evaluator or an individual with a current professional engineer license as provided in amended TWC, Chapter 37. Section 285.30(a) is amended to indicate that a site evaluation shall be performed on every tract of land where an OSSF will be installed “by either a site evaluator or a professional engineer” and that the report on the site evaluation is to be “prepared by either the site evaluator or the professional engineer.” This new language is necessary to clarify who is responsible for performing each site evaluation and preparing the report and to meet the new provisions in TWC, Chapter 37. Section 285.30(b) is amended to indicate that all aspects of a site evaluation shall be performed “by either a site evaluator or a professional engineer.” This new language is necessary to clarify who is responsible for performing all aspects of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(1) is amended by adding “site evaluator or the professional engineer” and deleting “individual performing the site evaluation.” This adopted language is necessary to clarify who is responsible for taking the borings at each OSSF site for the soil analysis and to meet the provisions of TWC, Chapter 37.

Section 285.30(b)(1)(B) is amended to indicate that the gravel analysis portion of a site evaluation shall be performed “by either a site evaluator or a professional engineer.” This new language is necessary to

clarify who is responsible for performing the gravel analysis of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(1)(C) is amended to indicate that either a site evaluator or a professional engineer must determine if there is the determination of a restrictive horizon. This new language is necessary to clarify who is responsible for performing this determination of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(2) is amended to indicate that the groundwater evaluation portion of a site evaluation shall be performed “by either a site evaluator or a professional engineer.” This new language is necessary to clarify who is responsible for performing the groundwater evaluation of each site evaluation and to meet the provisions of TWC, Chapter 37. Section 285.30(b)(2)(A) is amended by adding “site evaluator or the professional engineer” and deleting “individual performing the site evaluation.” This new language is necessary to be consistent with the other rules. Section 285.30(b)(2)(B) is amended by adding “site evaluator or the professional engineer” and deleting “individual.” This new language is necessary to be consistent with the other rules.

Subchapter F - Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives

The title of Subchapter F is amended from “Licensing and Registration Requirements for Installers, Apprentices, and Designated Representatives” to “Licensing and Registration Requirements for Installers, Apprentices, Designated Representatives, and Site Evaluators.” Section 285.50, General Requirements, is amended to provide a reference to licensing requirements that have moved from Chapter 285 to Chapter 30 and to delete paragraphs that are adopted and moved to Chapter 30. Section 285.50(a) is amended to provide a reference that the procedures for issuing licenses and registrations

have moved from Chapter 285 to Chapter 30. Existing §285.50(b) is amended to change the citation from §285.51 to §30.244 since the licensing requirements have been moved to Chapter 30. Section 285.50(b)(1) and (2) are deleted because they were moved to Chapter 30. Section 285.50(e) is added to incorporate licensing provisions regarding site evaluator from TWC, Chapter 37. Section 285.50(e) is moved to §285.50(f) without change for better organization within the section.

Section 285.50(f) is moved to §285.50(g) for better organization within the section. In addition to the items listed, language is added that an individual working for a permitting authority shall not work as a site evaluator in the permitting authority's area of jurisdiction. The commission is modifying this subsection to remove any possible conflicts of interest for a designated representative. The language in §285.50(h) and (i) is moved from existing §285.53(a) and (b) without change for better organization.

Sections 285.51 - 285.60 are repealed and the existing language will be moved to the new Chapter 30.

Adopted new §285.60, Duties and Responsibilities of Site Evaluators, includes new requirements for the duties and responsibilities of site evaluators. Adopted §285.60(1) contains new language that requires a site evaluator to possess a current license. Since publication of the proposed rules, the commission has deleted language stating that a site evaluator shall possess a current professional engineer license. A professional engineer may perform site evaluations without obtaining a site evaluator license, as stated in §285.50(e). This adopted paragraph states that it is the duty of a site evaluator to maintain a license and to ensure that the license is obtained or renewed before any site evaluations are performed. Adopted §285.60(2) contains a new requirement to document the license

number on work-related documentation because it is important for the owner of an OSSF to have a record of who performed the site evaluation. This information will allow the executive director to determine who is responsible for compliance with the rules and will enhance the ability of the executive director to enforce the requirements of Texas Health and Safety Code (THSC), Chapter 366 and Chapter 285. Adopted §285.60(3) is a new provision requiring a site evaluator to provide accurate information in the site evaluation report. Since publication of the proposed rules and in response to comments received the commission has added the phrase “required by §285.30(a)” to clarify that the requirements of this subsection must be met in addition to providing any other documentation submitted to the permitting authorities. This paragraph was added to specify that site evaluators are expected to avoid fraudulent activities, because the permitting authorities must be able to rely on the accuracy of the documentation of site evaluators to determine whether the appropriate OSSF is being proposed for the site. Adopted §285.60(4) is added to require that an individual with a site evaluator license maintain a current license as an Installer II, designated representative, or a professional sanitarian. Since publication of the proposed rules and in response to comments received, the commission has amended paragraph (4) to allow a professional engineer or an individual holding a certificate as a current certified professional soil scientist to obtain a site evaluator license. This language is necessary to provide the exemption allowed in SB 405, relating to the regulation of professional geoscientists and to address the same requirements for other professionals who obtain the site evaluator license. New §285.60(5) is added to include the duties of a site evaluator provided in TWC, Chapter 37. Adopted §285.60(6) is added to require the site evaluator to maintain a current address and phone number with the executive director and submit any change in writing within 30 days of the change. It is imperative for the executive director to have up-to-date information on site evaluators. This is necessary to ensure

that the executive director is able to provide updates, track requirements, and send notices of renewal and to allow the executive director to secure compliance under these rules.

Section 285.62, Duties and Responsibilities of Designated Representatives, is amended to include language on the prohibition of designated representatives from performing work as site evaluators within the authorized agent's area of jurisdiction. Section 285.62(19) is amended to expand the applicability of this paragraph to site evaluators. This is a general prohibition intended to eliminate potential conflict as a result of a designated representative working outside the position of the designated representative's responsibilities with the authorized agent.

Section 285.63, Duties and Responsibilities of Registered Apprentices, is amended to include additional language to better define an apprentice's duties and responsibilities and to improve enforceability.

Adopted new §285.63(a)(3) is added to require that an apprentice is to refrain from receiving compensation for an OSSF installation from anyone except the supervising installer. This language is necessary to improve enforceability. Section 285.63(a)(3) is renumbered to §285.63(a)(4). Section 285.63(b) is amended to add the word "advertise" to the list of activities an apprentice is not to perform. This language is necessary to be consistent with the requirements in Chapter 30.

Section 285.64, Denial, Reprimand, Suspension, or Revocation of License or Registration, is repealed because the majority of the language has been moved to Chapter 30.

Adopted new §285.64, Suspension or Revocation of License or Registration, provides the violations for which the executive director may suspend or revoke a license or registration. Adopted new §285.64(a) states the actions for which a license may be suspended. New §285.64(1) identifies the actions for suspension by an installer. Adopted new §285.64(a)(1)(A) states that a license may be suspended for an installer for failing to perform required maintenance on an OSSF for at least eight consecutive months (failing to maintain records is evidence of failure to perform maintenance on the OSSF). Since publication of the proposed rules, in response to comments received, the commission has amended new subparagraph (B) to clarify that a license may be suspended for failing to properly submit maintenance reports “required by §285.7(d)...” This change clarifies that installers must submit maintenance reports according to §285.7(d), which allows the installer to submit fewer maintenance reports if the OSSF uses electronic monitoring and automatic notification. Since publication of the proposed rules, in response to comments received, the commission has amended new subparagraph (C) to state that a license may be suspended for failing to properly submit “four or more required OSSF maintenance reports over any two-year period.” This change clarifies that installers must submit maintenance reports according to §285.7(d), which allows the installer to submit fewer maintenance reports if the OSSF uses electronic monitoring and automatic notification. A license may be suspended for a designated representative for the prohibited actions listed. Adopted new subparagraph (A) states that a license may be suspended for failing to verify, before the initial inspection for a particular OSSF, that the individual is a properly licensed installer. Adopted new subparagraph (B) states that a license may be revoked for failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71. Adopted new subparagraph (C) states that a license may be revoked for failing to enforce the requirements of the order, ordinance, or resolution of an

authorized agent. New §285.64(b) states that in addition to the items listed in §30.33, the executive director may revoke a license or registration for the listed reasons. Adopted new §285.64(b)(1) lists the reasons for revocation for an installer. Licenses may be revoked for constructing, or allowing the construction of, an OSSF that is not in compliance with Chapter 285, or allowing, or beginning, the construction of an OSSF without a permit when a permit is required.

Adopted new §285.64(b)(2) lists the reasons a license may be revoked for a designated representative. These include approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval; practicing as an apprentice or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or working for a maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent.

Adopted new §285.64(b)(3) provides the actions for which a license for a site evaluator may be revoked. The list of actions leading to revocation include failing to maintain a current Installer II, designated representative, or professional sanitarian license. Since publication of the proposed rules, the commission has amended paragraph (3) to add that failing to maintain either a license as a professional engineer or a certificate as a certified professional soil scientist are reasons the executive director may revoke a site evaluator license. This change clarifies that if a site evaluator relies on a professional engineer's license or a certified professional soil scientist certificate to obtain the site evaluator license and then fails to maintain the professional engineer license or the certified professional soil scientist certificate, the executive director may revoke the site evaluator license. Adopted new

§285.64(b)(4) states the actions for which a license for apprentice may be revoked. Actions leading to a revocation include acting as, advertising, or performing duties and responsibilities of, an installer without the direct supervision of, or direct communication with, the supervising installer; or receiving compensation for an OSSF installation from someone other than the supervising installer.

Section 285.65, Hearings, is repealed because the majority of the language has been moved to Chapter 30.

Subchapter G - OSSF Enforcement

Section 285.71, Authorized Agent Enforcement of OSSFs, is amended to incorporate language regarding site evaluators, or professional engineers performing site evaluations from new provisions in TWC, Chapter 37.

Section 285.71(a)(1) is amended to add “site evaluator” to the list of licensed individuals who can be investigated by the authorized agents if a complaint is received. This language is necessary to provide authorized agents the ability to take appropriate and timely action, including criminal or civil enforcement, on all OSSF-related complaints of the types listed.

Section 285.71(a)(2) is amended to add “site evaluator, or a professional engineer who is performing site evaluations” to the list of individuals who can be investigated by the authorized agents if they do not possess a current license. This language is necessary to provide authorized agents the ability to take

appropriate and timely action, including criminal or civil enforcement, on all OSSF-related complaints of the types listed.

Subchapter I - Appendices

Two tables in §285.91 are amended for consistency with the text of the rules and for clarification.

The table in §285.91(9) is amended to indicate that the site evaluation is to be performed by either a site evaluator or a professional engineer to be consistent with the revisions to §285.30.

The table in §285.91(10) is amended for clarification. The language “Sewage Treatment Tanks or Holding” is deleted from the title of the column to clarify that all tanks need to be separated from the features listed in the table. This language is necessary, since there are several types of tanks identified in the rules and not all are listed in the table. References to Chapter 290 are amended to reflect the correct chapter name.

FINAL REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the adopted rules in light of the regulatory analysis requirements of Texas Government Code, §2001.0225 and determined that the rules are not subject to §2001.0225. Section 2001.0225 only applies to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure. The intent of the rules is to consolidate the requirements for the various occupations, licensed or registered by the commission, into one chapter not to protect the environment or human health. Protection of human health and the environment may be a

by-product of the adopted rules but it is not the specific intent of the rules. Furthermore, the adopted rules would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the rules would simply consolidate existing rule language into one chapter. Thus, the adopted rules do not meet the definition of a “major environmental rule” as defined in Texas Government Code, §2001.0225(g)(3) and do not require a full regulatory impact analysis.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a takings impact assessment for these adopted rules according to Texas Government Code, §2007.43. The following is a summary of that assessment. The specific purpose of the rules is to consolidate the requirements for the various occupations, licenses or registrations by the commission, into one chapter. The adopted rules would substantially advance this specific purpose by setting forth detailed procedures for obtaining an occupational license or registration including procedures for: the initial application; examinations; and renewal applications. The adopted rules do not constitute a taking because they would not burden private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the adopted rulemaking and found that the rules are neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Texas Coastal Management Program (CMP) nor will they affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the adoption is not subject to the CMP.

HEARING AND COMMENTERS

The commission held a public hearing in Austin on October 11, 2001. The public comment period closed on October 22, 2001. No commenters provided oral comments at the public hearing on Chapter 285. The following commenters provided written comments on Chapter 285: Bell County Public Health District (BCPHD), Cypress Cove Maintenance Association (CCMA), Infiltrator Systems, Inc. (IS), Northeast Texas Municipal Water District (NTMWD), Sea Grant Marine Advisory Service (SGMAS), Springhills Water Management District (SWMD), Texas On-Site Wastewater Association (TOWA), Williamson County and Cities Health District (WCCHD), and one individual.

RESPONSE TO COMMENTS

Comments on §285.2

One individual commented that he disagreed with the proposed definition of “designated representative.” The individual commented that the proposed definition does not allow a designated representative to perform site evaluations.

The commission disagrees with the comment. The definition incorporates language from TWC, Chapter 37. Section 285.62(19) specifies that a designated representative cannot perform site evaluations in their area of jurisdiction.

NTMWD commented that the definition for “on-site sewage facility” needs to include the words “treatment and” before “disposal” and add “by means of conventional or secondary process.”

The commission agrees in part. The commission agrees that on-site sewage facilities treat and dispose of sewage by means of conventional or secondary processes. However, the definition has not been modified because the purpose of the definition for an "on-site sewage facility" is to give it the same meaning of an "on-site sewage disposal system" which is defined by THSC, Chapter 366. This makes the term "on-site sewage facility" consistent with the provisions of THSC, Chapter 366, which is the statute that authorizes the OSSF program.

SGMAS requested that “certified professional soil scientist” be included in the definition of “site evaluator” and that “certified professional soil scientists” be exempt from the licensing requirements.

The commission disagrees that a “certified professional soil scientist” should be exempt from the licensing requirements of “site evaluator.” House Bill 3111 only exempted professional engineers from having to obtain a site evaluator license. The commission, however, agrees that a soil scientist is a professional with the experience, knowledge, and training most relevant to the evaluation of soil and site limitations. The commission also agrees that a certified professional soil scientist is allowed to obtain a site evaluator license without having to obtain either an Installer II, designated representative, or professional sanitarian license based on the certification from the American Society of Agronomy. Therefore, changes have been made in 30 TAC §30.240(d) and §285.60(4) to include the individuals certified as certified professional soil scientists as being able to obtain a site evaluator license.

SGMAS indicated that the language regarding the relationship of professional engineers and the site evaluator license is not clear.

The commission agrees with the comment. The commission has amended the language in §285.2(67) to delete “or holds a current professional engineer license.” According to THSC, §366.071, professional engineers are exempt from having to obtain a site evaluator license in order to perform site evaluations. Therefore a professional engineer is not a site evaluator unless the professional engineer obtains a site evaluator license. Language in this paragraph and in §§285.50(e), 285.60(1), 285.60(4), and 30.237(10) imply that the professional engineer is a site evaluator, which could be confusing. Language has been added to §285.2(67) that “a professional engineer may perform site evaluations without obtaining a site evaluator license.” This language will clarify that the professional engineer is exempt from the licensing requirements.

Comments on §285.30

CCMA commented that the requirement in §285.30(a) for a site evaluation on “every tract of land” is a contradiction with §285.3(f)(2), which is an exception to the permitting requirements for a tract of land that is ten acres or larger. CCMA recommended that additional exceptions be added to §285.3(f)(2) regarding Comal County.

The commission disagrees with the comment. The commission has determined that there is no contradiction since the correct OSSF system should be installed regardless of the acreage. To ensure that the corrected system is installed, a site evaluation will determine the type of OSSF

system that should be installed. Further, the exceptions proposed by the commenter could be included in the more stringent requirements of the Comal County Order if the county agrees with the proposed language and if adequate justification is developed.

Comments on §285.50

SWMD recommended in §285.50(c) that individuals who have a “Texas Geoscientist License” should be exempt from the site evaluator licensing requirement. SWMD commented that the “State has passed legislation for professional geoscientist licenses and the license should be treated as equal to a professional engineer in the rules for the site evaluator.”

The commission disagrees with the comment. The commission acknowledges passage of SB 405 relating to the regulation of professional geoscientists. However, the licensing of geoscientists is not effective until September 1, 2003. Further, HB 3111 only exempted professional engineers from having to obtain a site evaluator license. Section 285.50(e) includes an exemption for professional engineers and is the only exemption allowed in the statute (THSC, §366.071).

Comments on §285.60

SGMAS indicated that the language regarding the relationship of professional engineers and the site evaluator license is not clear.

The commission agrees with the comment. The commission has amended the language in §285.60(1) to delete “or holds a current professional engineer license.” According to THSC,

§366.071, professional engineers are exempt from having to obtain a site evaluator license in order to perform site evaluations. Therefore a professional engineer is not a site evaluator unless the professional engineer obtains a site evaluator license. Language in this paragraph and in §§285.2(67), 285.50(e), 285.60(4), and 30.237(10) imply that the professional engineer is a site evaluator, which could be confusing.

SGMAS recommended that the following wording be changed from “provide true and accurate information on any site evaluation or other documentation” to “provide true and accurate information on any site evaluation, with soil descriptions documented according to USDA standards as outlined in the Soil Survey Manual (Agric. Hndbk. No. 18, USDA, U.S. Govt. Printing Office, Washington, D.C. 1993).”

The commission agrees that the language should include a reference to the specific section of the rules regarding the information that should be included in the site evaluation report. Therefore, the commission has amended the rule language in §285.60(3) to “provide true and accurate information in the site evaluation report required in §285.30(a) of this title (relating to Site Evaluation) or other documentation.” The soil descriptions covered in the manual referenced by the commenter are listed in §285.30(b)(1)(A); therefore, it is not necessary to list another reference.

SGMAS indicated that the language needs to be clarified in §285.60(4). It appears that a professional engineer would need to have either an Installer II, designated representative, or professional sanitarian license in addition to the professional engineer license in order to perform site evaluations.

The commission agrees with the comment. According to THSC, §366.071, professional engineers are exempt from having to obtain a site evaluator license in order to perform site evaluations.

Therefore a professional engineer is not a site evaluator unless the professional engineer obtains a site evaluator license. Language in this section and in §§285.2(67), 285.50(e), 285.60(1), and 30.237(10) imply that the professional engineer is a site evaluator, which could be confusing.

Language has been added to the definition for “site evaluator” in §285.2(67) and §30.237(10) to clearly indicate that a professional engineer is exempt from having to obtain a site evaluator license.

The commission recognizes that although professional engineers are exempt from having to obtain the site evaluator license, there may be professional engineers who want to obtain the site evaluator license. Therefore, the commission has amended the rule to clarify that a professional engineer who wants to obtain a site evaluator license must maintain a professional engineer’s license and comply with the requirements of Chapter 30. Further, language has been added to clarify that an individual who is a certified professional soil scientist must also maintain the certified professional soil scientist certificate in order to maintain the site evaluator license.

IS commented that a “designated representative should be prohibited from being a stocking distributor of any approved onsite wastewater products in the State of Texas” and that the designated representative “should not be able to sell, distribute or install any onsite wastewater products in the State of Texas....”

The commission disagrees with the comment. The commission is aware of the concern, however, the suggested change is a significant change in the rule and is beyond the scope of this rulemaking. The commission may consider this suggestion in a future rulemaking. Language is already included in §285.62(19) prohibiting a designated representative from installing systems within the authorized agent’s area of jurisdiction.

TOWA commented that language should be added to prohibit a designated representative from working as a distributor of an OSSF-related product in the authorized agent’s area of jurisdiction.

The commission disagrees with the comment. The commission is aware of the concern, however, the suggested change is a significant change in the rule and is beyond the scope of this rulemaking. The commission may consider this suggestion in a future rulemaking.

Comments on §285.64

WCCHD recommended that the language in §285.64(a)(1)(A) - (C) be revised to take into account the requirements in §285.7(d)(3), which allows the number of required maintenance reports to be reduced if electronic monitoring and automatic notification are used.

The commission agrees with the comment. The commission has amended §285.64(a)(1)(B) to state, “failing to properly submit maintenance reports required by §285.7(d)....” The commission has amended §285.64(a)(1)(C) to state “failing to properly submit four or more...reports....” rather than five or more reports. These changes will address the use of electronic monitoring and automatic notification, which allows the number of required maintenance visits to be reduced from three to two per year.

WCCHD recommended that the language in §285.64(a)(2)(A) be deleted. WCCHD and BCPHD believe the penalty should be levied against the authorized agent and not against the designated representative. WCCHD and BCPHD feel that it is not a fair process to enforce against the designated representative, since the designated representative may not be able to enforce all areas of the rules. BCPHD also requested that consideration be given to “maintain this rule as presently adopted.”

The commission disagrees with the comments. The commission has determined that designated representatives may violate the rules and the violation may result in suspension of the designated representative’s license. This language is needed to provide the executive director with authority to initiate enforcement against a designated representative who fails to comply with the requirements of the rules. In addition, §285.64(a)(2)(A) is identical to existing §285.64(d)(1)(B)(i), which became effective June 13, 2001.

WCCHD recommended that the language in §285.64(a)(2)(B) be deleted. WCCHD and BCPHD believe the penalty should be levied against the authorized agent and not against the designated

representative. WCCHD and BCPHD feel that it is not a fair process to enforce against the designated representative, since the designated representative may not be able to enforce all areas of the rules. BCPHD also requested that consideration be given to “maintain this rule as presently adopted.”

The commission disagrees with the comments. Since this provision is applicable only to licenses issued under this chapter, the commission has determined that designated representatives may violate the rules and the violation may result in suspension of the designated representative’s license. This language is needed to provide the executive director with authority to initiate enforcement against a designated representative who fails to comply with the requirements of the rules. In addition, §285.64(a)(2)(B) is identical to existing §285.64(d)(1)(B)(ii), which became effective June 13, 2001.

BCPHD believes the penalty in §285.64(a)(2)(C) should be levied against the authorized agent and not against the designated representative. BCPHD feels that it is not a fair process to enforce against the designated representative, since the designated representative may not be able to correct all areas of the rules. BCPHD also requested that consideration be given to “maintain this rule as presently adopted.”

The commission disagrees with the comments. The commission has determined that designated representatives may violate the rules and the violation may result in suspension of the designated representative’s license. This language is needed to provide the executive director with authority to initiate enforcement against a designated representative who fails to comply with the

requirements of the rules. In addition, §285.64(a)(2)(C) is identical to existing §285.64(d)(1)(B)(iii), which became effective June 13, 2001.

WCCHD recommended that the language in §285.64(b)(2)(A) be deleted. WCCHD and BCPHD believe the penalty should be levied against the authorized agent and not against the designated representative. WCCHD and BCPHD feel that it is not a fair process to enforce against the designated representative, since the designated representative may not be able to enforce all areas of the rules. BCPHD also requested that consideration be given to “maintain this rule as presently adopted.”

The commission disagrees with the comments. The commission has determined that designated representatives may violate the rules, and the violation may result in suspension of the designated representative’s license. This language is needed to provide the executive director with authority to initiate enforcement against a designated representative who fails to comply with the requirements of the rules. In addition, §285.64(b)(2)(A) is identical to existing §285.64(d)(2)(B)(ii), which became effective June 13, 2001.

WCCHD recommended that the language in §285.64(b)(2)(B) be deleted. WCCHD and BCPHD believe the penalty should be levied against the authorized agent and not against the designated representative. WCCHD and BCPHD feel that it is not a fair process to enforce against the designated representative, since the designated representative may not be able to enforce all areas of the rules. BCPHD also requested that consideration be given to “maintain this rule as presently adopted.”

The commission disagrees with the comments. The commission has determined that designated representatives may violate the rules, and the violation may result in suspension of the designated representative's license. This language is needed to provide the executive director with authority to initiate enforcement against a designated representative who fails to comply with the requirements of the rules. In addition, §285.64(b)(2)(B) is identical to existing §285.64(d)(2)(B)(iv), which became effective June 13, 2001.

BCPHD believes the penalty in §285.64(b)(2)(C) should be levied against the authorized agent and not against the designated representative. BCPHD feels that it is not a fair process to enforce against the designated representative, since the designated representative may not be able to enforce all areas of the rules. BCPHD also requested that consideration be given to "maintain this rule as presently adopted."

The commission disagrees with the comments. The commission has determined that designated representatives may violate the rules, and the violation may result in suspension of the designated representative's license. This language is needed to provide the executive director with authority to initiate enforcement against a designated representative who fails to comply with the requirements of the rules. In addition, §285.64(b)(2)(C) is identical to existing §285.64(d)(2)(B)(v), which became effective June 13, 2001.

The commission has revised §285.64(b)(3) to indicate that the executive director may revoke a site evaluator's license for failing to maintain a current license for a "professional engineer...or a certified professional soil scientist certificate." The commission agrees that a certified

professional soil scientist is allowed to obtain a site evaluator license without having to obtain either an Installer II, designated representative, or professional sanitarian license based on the certification from the American Society of Agronomy. Further, the commission recognizes that although the professional engineer is exempt from having to obtain the site evaluator license, there will be professional engineers who may obtain the site evaluator license. Therefore, language has been added that both of these professionals could have their licenses subject to revocation if they fail to maintain the license of certificate.

STATUTORY AUTHORITY

The amendments are adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The adopted amendments are also authorized under the general authority granted in 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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

SUBCHAPTER A: GENERAL PROVISIONS

§285.1, §285.2

§285.1. Purpose and Applicability.

(a) Purpose. The purpose of this chapter is to provide a comprehensive regulatory program for the management of on-site sewage facilities (OSSFs), as prescribed by the Texas Health and Safety Code, Chapter 366. This chapter establishes minimum standards for planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, and inspection of OSSFs. This chapter also provides the procedures for the designation of local governmental entities as authorized agents. The licensing of installers, designated representatives, and site evaluators and the registration of apprentices is included in Chapter 30 of this title (relating to Occupational Licenses and Registrations). Unauthorized discharge of effluent into or adjacent to the waters in the state is prohibited.

(b) Applicability. This chapter applies to:

(1) any person who has an ownership interest in an OSSF; or

(2) any person who participates in any activity relating to the development of planning materials, construction, installation, alteration, repair, extension, operation, maintenance, permitting, inspection, or investigation of an OSSF; or

(3) any governmental entity that is, desires to be, or was, designated as an authorized agent.

§285.2. Definitions.

The following words and terms in this section are in addition to the definitions in Chapter 3 and Chapter 30 of this title (relating to Definitions and Occupational Licenses and Registrations). The words and terms in this section, when used in this chapter, shall have the following meanings.

(1) **Aerobic digestion** - The bacterial decomposition and stabilization of sewage in the presence of free oxygen.

(2) **Alter** - To change an on-site sewage facility (OSSF) resulting in:

(A) an increase in the volume of permitted flow;

(B) a change in the nature of permitted influent;

(C) a change from the planning materials approved by the permitting authority;

(D) a change in construction; or

(E) an increase, lengthening, or expansion of the treatment or disposal system.

(3) **Anaerobic digestion** - The bacterial decomposition and stabilization of sewage in the absence of free oxygen.

(4) **Apprentice** - An individual who has been properly registered with the executive director according to Chapter 30 of this title, and is undertaking a training program under the direct supervision of a licensed installer.

(5) **Authorization to construct** - Written permission from the permitting authority to construct an OSSF showing the date the permission was granted. The authorization to construct is the first part of the permit.

(6) **Authorized agent** - A local governmental entity that has been delegated the authority by the executive director to implement and enforce the rules adopted under Texas Health and Safety Code, Chapter 366.

(7) **Borehole** - A drilled hole four feet or greater in depth and one to three feet in diameter.

(8) **Certified professional soil scientist** - An individual who has met the certification requirements of the American Society of Agronomy to engage in the practice of soil science.

(9) **Cesspool** - A non-watertight, covered receptacle intended for the receipt and partial treatment of sewage. This device is constructed such that its sidewalls and bottom are open-jointed to allow the gradual discharge of liquids while retaining the solids for anaerobic decomposition.

(10) **Cluster system** - A sewage collection, treatment, and disposal system designed to serve two or more sewage-generating units on separate legal tracts where the total combined flow from all units does not exceed 5,000 gallons per day.

(11) **Commercial or institutional facility** - Any building that is not used as a single-family dwelling or duplex.

(12) **Compensation** - A payment to construct, alter, repair, extend, maintain, or install an OSSF. Payment may be in the form of cash, check, charge, or other form of monetary exchange or exchange of property or services for service rendered.

(13) **Composting toilet** - A self-contained treatment and disposal facility constructed to decompose non-waterborne human wastes through bacterial action.

(14) **Condensate drain** - A pipe that is used for the disposal of water generated by air conditioners, refrigeration equipment, or other equipment.

(15) **Construct** - To engage in any activity related to the installation, alteration, extension, or repair of an OSSF, including all activities from disturbing the soils through connecting the system to the building or property served by the OSSF. Activities relating to a site evaluation are not considered construction.

(16) **Delegate** - The executive director's act of assigning authority to implement the OSSF program under this chapter.

(17) **Designated representative** - An individual who holds a valid license issued by the executive director according to Chapter 30 of this title, and who is designated by the authorized agent to review permit applications, site evaluations, or planning materials, or conduct inspections on OSSFs.

(18) **Direct communication** - The demonstrated ability of an installer and the apprentice to communicate immediately with each other in person, by telephone, or by radio.

(19) **Direct supervision** - The responsibility of an installer to oversee, direct, and approve all actions of an apprentice relating to the construction of an OSSF.

(20) **Discharge** - To deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) **Edwards Aquifer** - That portion of an arcuate belt of porous, waterbearing predominantly carbonate rocks (limestones) known as the Edwards (Balcones Fault Zone) Aquifer trending from west to east to northeast in Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties; and composed of the Salmon Peak Limestone, McKnight Formation, West Nueces Formation, Devil's River Limestone, Person Formation, Kainer Formation, Edwards Group, and Georgetown Formation, or as amended under Chapter 213 of this title (relating to Edwards Aquifer). The permeable aquifer units generally overlie the less-permeable Glen Rose Formation to the south, overlie the less-permeable Comanche Peak and Walnut formations north of the Colorado River, and underlie the less-permeable Del Rio Clay regionally.

(22) **Edwards Aquifer Recharge zone** - That area where the stratigraphic units constituting the Edwards Aquifer crop out, including the outcrops of other geologic formations in proximity to the Edwards Aquifer, where caves, sinkholes, faults, fractures, or other permeable features would create a potential for recharge of surface waters into the Edwards Aquifer. The recharge zone is identified as a geographic area delineated on official maps located in the appropriate regional office and groundwater conservation district, or as amended by Chapter 213 of this title.

(23) **Extend** - To alter an OSSF resulting in an increase in capacity, lengthening, or expansion of the existing treatment or disposal system.

(24) **Floodplain (100-year)** - Any area susceptible to inundation by flood waters from any source and subject to the statistical 100-year flood (has a 1% chance of flooding each year).

(25) **Floodway** - The channel of a watercourse and the adjacent land areas (within a portion of the 100-year floodplain) that must be reserved in order to discharge the 100-year flood without cumulatively increasing the water surface elevation more than one foot above the 100-year flood elevation before encroachment into the 100-year floodplain.

(26) **Geotextile filter fabric** - A non-woven fabric suitable for wastewater applications.

(27) **Gravel-less drainfield pipe** - An eight-inch or ten-inch diameter geotextile fabric-wrapped piping product without gravel or media.

(28) **Grease interceptor** - Flootation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged.

(29) **Groundwater** - Subsurface water occurring in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(30) **Holding tank** - A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to an approved treatment process.

(31) **Individual** - A single living human being.

(32) **Install** - To put in place or construct any portion of an OSSF.

(33) **Installer** - An individual who is compensated by another to construct an OSSF.

(34) **Local governmental entity** - A municipality, county, river authority, or special district, including groundwater conservation districts, soil and water conservation districts, and public health districts.

(35) **Maintenance** - Required or routine performance checks, examinations, upkeep, cleaning, or mechanical adjustments to an OSSF, including replacement of pumps, filters, aerator lines, valves, or electrical components. Maintenance does not include alterations.

(36) **Maintenance company** - A person or business that maintains OSSFs.

(37) **Maintenance findings** - The results of a required performance check or component examination on a specific OSSF.

(38) **Malfunctioning OSSF** - An OSSF that is causing a nuisance or is not operating in compliance with this chapter.

(39) **Manufactured housing community** - Any area developed or used for lease or rental of space for two or more manufactured homes.

(40) **Multi-unit residential development** - Any area developed or used for a structure or combination of structures designed to lease or rent space to house two or more families.

(41) **Notice of approval** - Written permission from the permitting authority to operate an OSSF. The notice of approval is the final part of the permit.

(42) **Nuisance** -

(A) sewage, human excreta, or other organic waste discharged or exposed in a manner that makes it a potential instrument or medium in the transmission of disease to or between persons;

(B) an overflow from a septic tank or similar device, including surface discharge from or groundwater contamination by a component of an OSSF; or

(C) a blatant discharge from an OSSF.

(43) **On-site sewage disposal system** - One or more systems that:

(A) do not treat or dispose of more than 5,000 gallons of sewage each day; and

(B) are used only for disposal of sewage produced on a site where any part of the system is located.

(44) **On-site sewage facility (OSSF)** - An on-site sewage disposal system.

(45) **On-site waste disposal order** - An order, ordinance, or resolution adopted by a local governmental entity and approved by the executive director.

(46) **Operate** - To use an OSSF.

(47) **Owner** - A person who owns property served by an OSSF, or a person who owns an OSSF. This includes any person who holds legal possession or ownership of a total or partial interest in the structure or property served by an OSSF.

(48) **Owner's agent** - An installer, professional sanitarian, or professional engineer who is authorized to submit the permit application and the planning materials to the permitting authority on behalf of the owner.

(49) **Permit** - An authorization, issued by the permitting authority, to construct or operate an OSSF. The permit consists of the authorization to construct (including the approved planning materials) and the notice of approval.

(50) **Permitting authority** - The executive director or an authorized agent.

(51) **Planning material** - Plans, applications, site evaluations, and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit.

(52) **Platted** - The subdivision of property which has been recorded with a county or municipality in an official plat record.

(53) **Pretreatment tank** - A tank placed ahead of a treatment unit that functions as an interceptor for materials such as plastics, clothing, hair, and grease that are potentially harmful to treatment unit components.

(54) **Professional engineer** - An individual licensed by the Texas Board of Professional Engineers to engage in the practice of engineering in the State of Texas.

(55) **Professional sanitarian** - An individual registered by the Texas Department of Health to carry out educational and inspection duties in the field of sanitation in the State of Texas.

(56) **Proprietary system** - An OSSF treatment or disposal system that is produced or marketed under exclusive legal right of the manufacturer or designer or for which a patent, trade name, trademark, or copyright is used by a person or company.

(57) **Recharge feature** - Permeable geologic or manmade feature located on the Edwards Aquifer recharge zone where:

(A) a potential for hydraulic interconnectedness between the surface and the aquifer exists; and

(B) rapid infiltration from the OSSF to the subsurface may occur.

(58) **Recreational vehicle park** - A single tract of land that has rental spaces for two or more vehicles that are intended for recreational use only and has a combined wastewater flow of less than 5,000 gallons per day.

(59) **Regional office** - A regional office of the agency.

(60) **Repair** - To replace any components of an OSSF in situations not included under emergency repairs according to §285.35 of this title (relating to Emergency Repairs), excluding maintenance. The replacement of tanks or drainfields is considered a repair and requires a permit for the entire OSSF system.

(61) **Scum** - A mass of organic or inorganic matter which floats on the surface of sewage.

(62) **Secondary treatment** - The process of reducing pollutants to the levels specified in Chapter 309 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

(63) **Seepage pit** - An unlined covered excavation in the ground which operates in essentially the same manner as a cesspool.

(64) **Septic tank** - A watertight covered receptacle constructed to receive, store, and treat sewage by: separating solids from the liquid; digesting organic matter under anaerobic conditions; storing the digested solids through a period of detention; and allowing the clarified liquid to be disposed of by a method approved under this chapter.

(65) **Sewage** - Waste that:

(A) is primarily organic and biodegradable or decomposable; and

(B) originates as human, animal, or plant waste from certain activities, including the use of toilet facilities, washing, bathing, and preparing food.

(66) **Single family dwelling** - A structure that is either built on or brought to a site, for use as a residence for one family. A single family dwelling includes all detached buildings located on the residential property and routinely used only by members of the household of the single family dwelling.

(67) **Site evaluator** - An individual who holds a valid license issued by the executive director according to Chapter 30 of this title and who conducts preconstruction site evaluations, including visiting a site and performing soil analysis, a site survey, or other activities necessary to determine the suitability of a site for an OSSF. A professional engineer may perform site evaluations without obtaining a site evaluator license.

(68) **Sludge** - A semi-liquid mass of partially decomposed organic and inorganic matter which settles at or near the bottom of a receptacle containing sewage.

(69) **Soil** - The upper layer of the surface of the earth that serves as a natural medium for the growth of plants.

(70) **Soil absorption system** - A subsurface method for the treatment and disposal of sewage which relies on the soil's ability to treat and absorb moisture and allow its dispersal by lateral and vertical movement through and between individual soil particles.

(71) **Subdivision** - A tract of property divided into two or more parts either by platting or field notes with metes and bounds, and transferred by deed or contract for deed.

(72) **Well** - A water well, injection well, dewatering well, monitoring well, piezometer well, observation well, or recovery well as defined under Texas Water Code, Chapters 26, 32 and 33, and 16 TAC Chapter 76 (relating to Water Well Drillers and Water Well Pump Installers).

**SUBCHAPTER D: PLANNING, CONSTRUCTION, AND
INSTALLATION STANDARDS FOR OSSFs**

§285.30

STATUTORY AUTHORITY

The amendment is adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The adopted amendment is also authorized under the general authority granted in 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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§285.30. Site Evaluation.

(a) General Requirement. To document the soil and site conditions, a complete site evaluation shall be performed by either a site evaluator or a professional engineer on every tract of land where an OSSF will be installed. A report prepared by either the site evaluator or the professional engineer

providing the site evaluation criteria in subsection (b) of this section shall be submitted with the planning materials.

(b) Site evaluation criteria. All aspects of the site evaluation shall be performed by either a site evaluator or a professional engineer according to this section. The information obtained during the site evaluation shall be used to determine the type and size of the OSSF.

(1) Soil analysis. The site evaluator or the professional engineer shall either drill two soil borings or excavate two backhoe pits at opposite ends of the proposed disposal area to determine the characteristics of the soil. In areas of high soil variability, the permitting authority may require additional borings or backhoe pits. The borings or backhoe pits shall either be excavated to a depth of two feet below the adopted excavation of the disposal area, or to a restrictive horizon, whichever is less.

(A) Soil texture analysis. A general texture analysis shall be performed to identify the classification of the soil. The different soils in each class are provided in §285.91(6) of this title (relating to Tables).

(i) Soil Class Ia. This class includes sandy textured soils that contain more than 30% gravel.

(ii) Soil Class Ib. This class includes sand and loamy sand soils that contain less than or equal to 30% gravel.

(iii) Soil Class II. This class includes sandy loam and loam soils.

(iv) Soil Class III. This class includes silt, silt loam, silty clay loam, clay loam, sandy clay loam, and sandy clay soils.

(v) Soil Class IV. This class includes silty clay and clay soils.

(B) Gravel analysis. Class II or Class III soils containing gravel shall be further evaluated by either a site evaluator or a professional engineer by using a sieve analysis to determine the percentage of gravel by volume and the size of the gravel as indicated in §285.91(5) of this title.

(C) Restrictive horizons analysis. The soils within the borings or backhoe pits shall be analyzed by either a site evaluator or a professional engineer to determine if a restrictive horizon exists. Clay subsoils, rock, and plugged laminar soils are considered restrictive horizons. Restrictive horizons are recognized by an abrupt change in texture from a sandy or loamy surface horizon to:

(i) a clayey subsoil which an auger will not penetrate; or

(ii) rock-like material which an auger will not penetrate.

(2) Groundwater evaluation. The soil profile shall be examined by either a site evaluator or a professional engineer to determine if there are indications of groundwater within 24 inches of the bottom of the excavation.

(A) If the designated representative and the site evaluator or the professional engineer disagree on the presence of groundwater, the designated representative shall verify groundwater information using the Natural Resources Conservation Service (NRCS) soil survey for that county, if it is available.

(B) If the designated representative or the site evaluator or the professional engineer disagree with the NRCS soil survey, or if an NRCS soil survey does not exist for that county, the owner has the option to retain a certified professional soil scientist to evaluate the presence of groundwater and present that information to the designated representative for a final decision.

(3) Surface drainage analysis.

(A) Topography. The slope of each tract of land where an OSSF will be installed, areas of poor drainage such as depressions, and areas of complex slope patterns where slopes are dissected by gullies and ravines shall be determined.

(B) Flood hazard. The 100-year floodplain for each tract of land where an OSSF will be installed shall be determined from either Federal Emergency Management Agency (FEMA) maps or from a flood study prepared by a professional engineer when FEMA maps are not available.

(4) Separation requirements. All features in the area where the OSSF is to be installed that could be contaminated by the OSSF or could prevent the proper operation of the system shall be identified during the site evaluation. The separation requirements are in §285.91(10) of this title.

**SUBCHAPTER F: LICENSING AND REGISTRATION REQUIREMENTS
FOR INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, AND
SITE EVALUATORS**

§§285.50, 285.60, 285.62 - 285.64

STATUTORY AUTHORITY

The new and amended sections are adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The adopted new and amended sections are also authorized under the general authority granted in 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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§285.50. General Requirements.

(a) The procedures for issuing licenses and registrations for on-site sewage facilities (OSSF) installers, designated representatives, apprentices, and site evaluators are in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(b) Any individual who constructs any part of an OSSF shall hold a current installer license appropriate for the type of system being installed, except as noted in §30.244 of this title (relating to Exemptions). This does not include the individuals under the direct supervision of the licensed installer or registered apprentice.

(c) Any individual who performs the duties of a designated representative under §285.62 of this title (relating to Duties and Responsibilities of Designated Representatives) on behalf of the authorized agent shall possess a current designated representative license. Individuals may not advertise or represent themselves to the public as designated representatives unless they are employed, appointed, or contracted by an authorized agent and hold a current designated representative license.

(d) Any individual who performs the duties of an apprentice under §285.63 of this title (relating to Duties and Responsibilities of Registered Apprentices) must hold a current apprentice registration under a licensed installer.

(e) Effective September 1, 2002, any individual, other than a professional engineer, who performs the duties of a site evaluator under §285.60 of this title (relating to Duties and Responsibilities

of Site Evaluators) shall possess a current site evaluator license. An individual possessing a current professional engineer license is not required to possess a site evaluator license.

(f) When required by the permitting authority, the installer or the installer's apprentice must be present at the job site during the inspection or re-inspection of the OSSF.

(g) Any individual who acts in any capacity for a permitting authority shall not, within that permitting authority's area of jurisdiction:

(1) work as an apprentice to an OSSF installer;

(2) work as an OSSF installer;

(3) work for an OSSF maintenance company;

(4) work as a site evaluator; or

(5) perform any other OSSF-related activities which fall under the permitting authority's regulatory jurisdiction, except those activities directly related to the individual's duties as an employee of, appointee to, or contractor for the permitting authority.

(h) An Installer I is authorized to construct OSSFs as described in §285.91(9) of this title (relating to Tables).

(i) An Installer II is authorized to construct all types of OSSFs as described in §285.91(9) of this title.

§285.60. Duties and Responsibilities of Site Evaluators.

A site evaluator shall:

- (1) possess a current license from the executive director;
- (2) record their license number on all site evaluations, and all other correspondence prepared as a site evaluator under this chapter;
- (3) provide true and accurate information in the site evaluation report required by §285.30(a) of this title (relating to Site Evaluation) and in any other documentation;
- (4) maintain a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, or a certified professional soil scientist certificate, in addition to the site evaluator license;

(5) conduct preconstruction site evaluations, including visiting the site and performing soil analysis, a site survey, or other activities necessary to determine if a site is suitable for an on-site sewage facility (OSSF); and

(6) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

§285.62. Duties and Responsibilities of Designated Representatives.

A designated representative shall:

- (1) possess a current license from the executive director;
- (2) be employed, appointed, or contracted by an authorized agent;
- (3) enforce the rules and regulations of the Texas Health and Safety Code, Chapter 366, the Texas Water Code, this chapter, and the permitting authority;
- (4) assist the authorized agent in amending the authorized agent's order, ordinance, or resolution when necessary;
- (5) conduct subdivision reviews in conformance with this chapter;

(6) review variance requests to ensure compliance with the requirements of the permitting authority;

(7) approve only planning materials that conform with the requirements of this chapter and the requirements of the permitting authority;

(8) issue the authorization to construct;

(9) verify, before the initial inspection, that the installer possesses a current license and has the correct classification for constructing the permitted or planned on-site sewage facility (OSSF);

(10) conduct construction inspections as required under §285.3(d) of this title (relating to General Requirements);

(11) approve only construction that conforms with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval;

(12) issue the notice of approval;

(13) ensure collection of all OSSF related fees;

(14) ensure maintenance of accurate records of permitting, fees, inspections, maintenance reports, and complaints;

(15) investigate complaints and take appropriate and timely action;

(16) record his license number on all plan reviews, complaint investigations, inspection reports, site evaluations, and any other correspondence prepared in performance of the duties of a Designated Representative under this chapter;

(17) record the installer license number in any inspection reports relating to that installer;

(18) receive compensation for OSSF related services within the authorized agent's area of jurisdiction, only from the authorized agent or according to a signed contract with the authorized agent;

(19) while employed by, appointed to, or contracted by the authorized agent, refrain from performing any of the following activities within the authorized agent's area of jurisdiction:

(A) working as an apprentice to an OSSF installer;

(B) working as an OSSF installer;

(C) working for an OSSF maintenance company;

(D) working as a site evaluator; or

(E) performing any other OSSF-related activities which fall under the authorized agent's regulatory jurisdiction, except those activities directly related to the individual's duties as a designated representative for the authorized agent;

(20) verify the existence of a maintenance contract between an owner and the maintenance company according to §285.7(c) of this title (relating to Maintenance Requirements); and

(21) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

§285.63. Duties and Responsibilities of Registered Apprentices.

(a) An apprentice shall:

(1) represent his supervising installer during construction at the site;

(2) perform services associated with on-site sewage facility (OSSF) construction under the direct supervision and direction of the installer on-site or be in direct communication with the installer;

(3) refrain from receiving compensation for an OSSF installation from anyone except the supervising installer; and

(4) maintain a current address and phone number with the executive director and submit any change in address or phone number in writing within 30 days after the date of the change.

(b) An apprentice shall not act as, advertise, or offer to perform services as, an installer. An apprentice may not perform any services associated with OSSF construction except under the direct supervision of an installer holding a current license or according to the supervising installer's expressed directions.

§285.64. Suspension or Revocation of License or Registration.

(a) Suspension. In addition to the items listed in §30.33 of this title (relating to License or Registration Denial, Warning, Suspension, or Revocation), the executive director may suspend a license for the following reasons:

(1) for an installer:

(A) failing to perform required maintenance on an on-site sewage facility (OSSF) for at least eight consecutive months (failing to maintain records is evidence of failure to perform maintenance on the OSSF);

(B) failing to properly submit maintenance reports required by §285.7(d) of this title (relating to Maintenance Requirements) for an individual OSSF in a 12-month period; or

(C) failing to properly submit four or more required OSSF maintenance reports over any two-year period;

(2) for a designated representative:

(A) failing to verify, before the initial inspection for a particular OSSF, that the individual is a properly licensed installer;

(B) failing to investigate nuisance complaints or complaints against installers, within 30 days of receipt of the complaint, according to §285.71 of this title (relating to Authorized Agent Enforcement of OSSFs); or

(C) failing to enforce the requirements of the order, ordinance, or resolution of an authorized agent;

(b) Revocation. In addition to the items listed in §30.33 of this title, the executive director may revoke a license or registration for the following reasons:

(1) for an installer:

(A) constructing, or allowing the construction of, an OSSF that is not in compliance with Chapter 285 of this title;

(B) allowing, or beginning, the construction of an OSSF without a permit when a permit is required;

(2) for a designated representative:

(A) approving construction of an OSSF that is not in conformance with this chapter, the authorized agent's approved order, ordinance, or resolution, and the notice of approval;

(B) practicing as an apprentice or an installer in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent; or

(C) working for a maintenance company in the authorized agent's area of jurisdiction while employed, appointed, or contracted by that authorized agent;

(3) for a site evaluator: failing to maintain a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, or a certified professional soil scientist certificate; or

(4) for an apprentice:

(A) acting as, advertising, or performing duties and responsibilities of, an installer without the direct supervision of, or direct communication with, the supervising installer; or

(B) receiving compensation for an OSSF installation from someone other than the supervising installer.

**SUBCHAPTER F: LICENSING AND REGISTRATION REQUIREMENTS
FOR INSTALLERS, APPRENTICES AND DESIGNATED REPRESENTATIVES
§§285.51 - 285.60, 285.64, 285.65**

STATUTORY AUTHORITY

The repeals are adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The adopted repeals are also authorized under the general authority granted in 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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§285.51. Exemptions to Licensing Requirements.

§285.52. Administration.

§285.53. Qualifications.

§285.54. Basic Training and Continuing Education.

§285.55. Examinations.

§285.56. Applications for License.

§285.57. Registration of Apprentices.

§285.58. Applications for Renewal.

§285.59. Conditions for Denial of License, Registration, or Renewal.

§285.60. Terms and Fees.

§285.64. Denial, Reprimand, Suspension, or Revocation of License or Registration.

§285.65. Hearings.

SUBCHAPTER G: OSSF ENFORCEMENT

§285.71

STATUTORY AUTHORITY

The amendment is adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The adopted amendment is also authorized under the general authority granted in 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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§285.71. Authorized Agent Enforcement of OSSFs.

(a) Complaints. The authorized agent shall investigate a complaint regarding an on-site sewage facility (OSSF) within 30 days after receipt of the complaint, notify the complainant of the findings, and take appropriate and timely action on all documented violations. Appropriate action may include criminal or civil enforcement action as necessary under the authority of their order, ordinance, or

resolution, the Texas Water Code, Chapters 7 and 26, or the Texas Health and Safety Code, Chapters 341 and 366. This may include complaints against:

(1) registered apprentices and licensed installers, site evaluators, and designated representatives;

(2) individuals performing the duties as an apprentice, installer, designated representative, site evaluator, or a professional engineer who is performing site evaluations without a current registration or license;

(3) owners in violation of this chapter or the authorized agent's order, ordinance, or resolution; or

(4) owners of malfunctioning OSSFs on the owners' property.

(b) Conviction or court judgment under subsection (a)(1) and (2) of this section. Upon conviction or court judgment, the authorized agent shall send a copy of the conviction or court judgment to the executive director.

(c) Referral of complaints under subsection (a)(1) and (2) of this section. If there are unusual circumstances involved, or if the authorized agent is unable to take enforcement action, the authorized

agent may refer complaints to the executive director in writing at any time after a documented investigation of the complaint has been completed.

SUBCHAPTER I: APPENDICES

§285.91

STATUTORY AUTHORITY

The amendment is adopted under the authority granted to the commission by the Texas Legislature in TWC, Chapter 37. Furthermore, TWC, Chapter 37, provides the commission the authority to: establish classes and terms of occupational licenses and registrations; establish procedures for granting, denying, and suspending occupational licenses and registrations; establish fees for occupational licenses and registrations; and establish training, continuing education, and examination requirements.

The adopted amendment is also authorized under the general authority granted in 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; TWC, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under TWC, §5.013(15); and TWC, §7.002, which authorizes the commission to enforce provisions of TWC and THSC.

§285.91. Tables.

The following tables are necessary for the proper location, planning, construction, and installation of an OSSF.

(1) Table I. Effluent Loading Requirements Based on Soil Classification.

Figure: 30 TAC §285.91(1)

(2) Table II. Septic Tank Minimum Liquid Capacity.

Figure: 30 TAC §285.91(2)

(3) Table III. Wastewater Usage Rate.

Figure: 30 TAC §285.91(3)

(4) Table IV. Required Testing and Reporting.

Figure: 30 TAC §285.91(4)

(5) Table V. Criteria for Standard Subsurface Absorption Systems.

Figure: 30 TAC §285.91(5)

(6) Table VI. USDA Soil Textural Classifications.

Figure: 30 TAC §285.91(6)

(7) Table VII. Yearly Average Net Evaporation (Evaporation-Rainfall).

Figure: 30 TAC §285.91(7)

(8) Table VIII. OSSF Excavation Length (3 Feet in Width or Less).

Figure: 30 TAC §285.91(8)

(9) Table IX. OSSF System Designation.

Figure: 30 TAC §285.91(9)

(10) Table X. Minimum Required Separation Distances for On-Site Sewage Facilities.

Figure: 30 TAC §285.91(10)

(11) Table XI. Intermittent Sand Filter Media Specifications (ASTM C-33).

Figure: 30 TAC §285.91(11)

(12) Table XII. OSSF Maintenance Contracts, Affidavit, and Testing/Reporting Requirements.

Figure: 30 TAC §285.91(12)

(13) Table XIII. Disposal and Treatment Selection Criteria.

Figure: 30 TAC §285.91(13)