

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §285.2 and §285.32 and a new §285.8, concerning definitions, updating of testing criteria and permitting and maintenance requirements for aerobic treatment systems.

These proposed amendments will bring this chapter into conformity with House Bill (HB) 3059, passed by the 75th Legislature (1997), which amended Chapter 366 of the Health and Safety Code related to on-site sewage disposal systems. HB 3059 established that for single family residences in counties with a total population of less than 40,000, the regulatory authority for on-site sewage facilities may not condition the issuance of a permit to require the owner of an aerobic treatment system to have a maintenance contract. The proposed amendment reflects that in such situations the owner, after receiving the appropriate training, may either maintain the facility personally or enter into a maintenance contract. Also, HB 3059 modified the definition for on-site sewage disposal systems to allow for the use of cluster type system and expanded the definition of local governmental entity to allow public health districts to become authorized agents under this program. Finally, these amendments reflect the latest version of the National Sanitation Foundation International (NSF) criteria for the testing of proprietary treatment systems.

EXPLANATION OF PROPOSED RULE

Proposed changes to §285.2, relating to Definitions, amend the definition for on-site sewage disposal system and local government entity to conform with the definition of HB 3059. In addition, each definition has been numbered to comply with Texas Register format changes.

Proposed new §285.8, relating to Maintenance Contracts, adds a section to the rules which addresses the limitation on when a permitting authority can require a maintenance contract for aerobic treatment systems.

Proposed change to §285.32(b)(4), related to Criteria for Sewage Treatment Systems, amends the existing rule to reflect the most current publication dates for the appropriate NSF International standards.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these sections as proposed are in effect there will be fiscal implications as a result of the administration and enforcement of the sections. There are no costs anticipated for state government.

These rules will provide regulatory relief for certain private property owners, expand the opportunity for local regulation of on-site sewage facilities and update references to national testing standards for proprietary on-site wastewater treatment systems. By expanding the definition of local government, the rules will allow public health districts to operate as authorized agents of the commission and provide local control and management of on-site facility permitting and enforcement. The costs to any one local jurisdiction electing to operate as an authorized agent will vary on a case-by-case basis. A local government may assess fees to offset the costs of this program and for the purpose of this analysis it is assumed that fees are established at levels sufficient to support the program with no net costs to the local authority. Pursuant to the Texas Government Code, §2006.02, the agency has determined that this rule will have no adverse economic effect on small businesses because there will be no cost of compliance associated with implementation of this rule. Though there will no longer be a mandatory requirement to

have a maintenance contract as a condition of permitting in certain counties practical incentives associated with the operation of an aerobic system still provide business opportunities.

PUBLIC BENEFIT

Mr. Minick has also determined that for the first five-year period these sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be reductions in costs to private owners of aerobic on-site treatment systems, enhanced local control of on-site facility regulation and improved consistency of state regulations and national testing standards. There are no direct costs to any person, including any small business, as a result of compliance with these rules. These rules will result in cost reductions to some owners of aerobic treatment systems in counties of population less than 40,000 who elect to maintain those systems without a service contract with a third party provider. Some businesses may be affected indirectly to the extent that private system owners elect not to execute or renew existing maintenance contracts with firms providing these services. The actual impact to any one service provider will depend on the number of customers affected and cannot be determined in total. For individual customers, the effect is anticipated to be between \$100 -\$200 annually, although in individual circumstances contract costs could be higher. Most of these service providers are assumed to be small businesses, however the impact to a small business will be based on the number of maintenance contracts that are not executed or renewed and will be essentially equal for both small and larger businesses.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirement of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a “major environmental rule” as defined in the act, and it does not meet any of the four applicability requirements listed in §2001.0225(a).

The goal of this proposal is to implement the provisions of HB-3059 which clarifies two statutory definitions and provide an OSSF permittee with the option of performing required maintenance of aerobic treatment systems through either the efforts of the owner or a maintenance company in counties with a population of less than 40,000. This proposal does not create or impose any additional burdens on the regulated community.

This proposal will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety. On the contrary, this proposal is expected to have a positive effect on the economy and the environment. This proposal will not exceed any state or federal requirement or a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government.

TAKINGS IMPACT ASSESSMENT

The “Texas Government Action Affecting Private Property Act” as found in Chapter 2007 of the Texas Government Code, applies to governmental actions which affect private property. This statute provides that the regulation of on-site sewage disposal systems is specifically exempted from the application of that chapter for political subdivisions. The specific exemption is found at Chapter 2007.003(b)(11)(B).

The actions proposed are for the purpose of bringing the rules into conformity with HB 3059 of the 75th Legislative Session. Furthermore, the proposed changes would not affect private property because the rules as promulgated are intended to prevent the occurrence of a nuisance condition. The changes include amendments to definitions, a reduction in the permitting requirements for specific systems in certain counties and incorporating the most current NSF International standards into the rules. These actions in themselves do not constitute a taking of private property.

COASTAL MANAGEMENT PLAN

The commission has determined that this rulemaking action relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to Actions and Rules Subject to the CMP, commission rules governing on-site wastewater systems must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking action for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this rulemaking is consistent with the applicable goals 31 TAC §501.12(1)(2)(5) and (10) by protecting and preserving the quality and values of coastal natural resource areas (CNRAs); ensuring sound management of all coastal resources by allowing for compatible economic development and multiple use of the coastal zone; balancing the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring and enhancing CNRAs; and the benefits from minimizing loss of human life and property; and to educate the public about the principal coastal problems of state concern and technology available for the protection and improved

management of CNRAs. This action is consistent with 31 TAC §501.14(g)(3) which requires that on-site disposal systems be located, designed, operated, inspected and maintained so as to prevent releases of pollutants that may adversely affect coastal waters. These proposed amendments will maintain or enhance existing agency criteria utilized for management of on-site wastewater systems and will effectively maintain or enhance agency strategies for the protection of coastal natural resource areas.

PUBLIC HEARING

A public hearing on the proposal will be held at 10:00 a.m. on October 22, 1998 in Room 254S, of TNRCC Building E, located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

SUBMITTAL OF COMMENTS

Written comments on the proposal should mention Rule Log Number 97150-285-WT and may be submitted to Lutrecia Oshoko, Office of Policy and Regulatory Development, MC 201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be received by 5:00 p.m., October 26, 1998. For further information or questions concerning this proposal, please contact Warren Samuelson, Certification and Compliance Division, (512) 239-4799.

STATUTORY AUTHORITY

These amendments are proposed under the authority of the Texas Health and Safety Code, Chapter 366.

These amendments will bring 30 TAC Chapter 285 into conformity with some of the changes to Chapter 366 as made by the 75th Legislature through House Bill 3059.

There are no other codes, statutes or rules that will be affected by this proposal.

SUBCHAPTER A : GENERAL PROVISIONS

§285.2 and §285.8

§285.2. Definitions.

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

(1) **Abandoned tank** - A tank that is not to be used or is not allowed to be used by a permitting authority.

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

(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 agency, and is undertaking a training program under the supervision of an installer (holding a valid certificate under this chapter) who has agreed to accept responsibility for the individual.

(5) **Authorized agent** - A local governmental entity authorized by the commission, executive director or Chapter 284 of this title (relating to Private Sewage Facilities) to implement and enforce Chapter 366, Texas Health and Safety Code.

(6) **Bedrock** - A continuous horizontal layer of hardened mineral deposits that do not support growth of common plant life.

(7) **Blackwater** - All sewage other than greywater that contains sufficient human or animal wastes to require the water to be treated prior to disposal to the earth's surface or subsurface.

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

(9) **Certificate or certification** - The actual certificate of registration held by an individual required to obtain such under this chapter or the process of obtaining a certificate of registration from the agency.

(10) **Cesspool** - A non-watertight, covered receptacle intended for the receipt and partial treatment of domestic 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.

(11) **Chemical** - A substance that in sufficient quantity could have a biotoxic effect on OSSFs.

(12) **Cluster system** - An on-site 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.

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

(14) **Condensate drain** - Collection and disposal of water generated by air conditioners, refrigeration equipment, and other equipment.

(15) **Delegation** - To delegate or designate.

(16) **Designated representative** - An individual who holds a valid certificate with the agency and is designated by the authorized agent to make site evaluations, percolation tests, system evaluations, and inspections subject to the authorized agent's approval.

(17) **Direct supervision** - The responsibility of an installer to perform the oversight, direction and approval of all actions of an apprentice related to the installation of an OSSF.

(18) **Edwards Aquifer** - That portion of an arcuate belt of porous, water bearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Comal, Hays, Travis, and Williamson Counties or as amended under Chapter 213 of this title (relating to Edwards Aquifer).

(19) **Edwards Aquifer Recharge zone** - Generally, that area where the stratigraphic units constituting the Edwards Aquifer crop out, and 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 specifically that geological area delineated on official maps located in the Austin and San Antonio Regional Offices of the agency, or as amended by Chapter 213 of this title (relating to Edwards Aquifer).

(20) **Emergency repair** - A repair made to an OSSF to abate a serious and dangerous nuisance condition without altering the OSSF's planned function and notification is given to the permitting authority within 72 hours of when the repairs begin.

(21) **Evapotranspiration (ET) system** - A subsurface sewage disposal facility which relies on soil capillarity and plant uptake to dispose of treated effluent through surface evaporation and plant transpiration.

(22) **Floodplain (100-year)** - That area along a watercourse during the time the watercourse is subject to the statistical 100-year flood.

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

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

(25) **Gravel-less drainfield pipe** - A generically labeled large diameter (usually eight or ten inches) geotextile fabric-wrapped piping product which is intended for use without gravel in a subsurface disposal facility.

(26) **Grease interceptor** - Floatation chambers where grease floats to the water surface and is retained while the clearer water underneath is discharged. There are no moving mechanical parts and its operational characteristics are similar to a septic tank.

(27) **Greywater** - Wastewater from clothes washing machines, showers, bathtubs, handwashing lavatories, and sinks not used for the disposal of hazardous or toxic ingredients or waste from food preparations.

(28) **Groundwater** - Subsurface water that occurs beneath the water table in soils and geologic formations that are fully saturated either year-round or on a seasonal or intermittent basis.

(29) **Hardness (water)** - Primarily the presence in water of calcium bicarbonate, magnesium bicarbonate, calcium sulfate (gypsum), magnesium sulfate (epsom salts), calcium chloride, and magnesium chloride in solution.

(30) **Holding tank** - A watertight container equipped with a high-level alarm used to receive and store sewage pending its delivery to, and treatment at, an approved treatment facility. This type of facility is generally intended for interim use, if and when approved by the permitting authority.

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

(32) **Installer** - An individual who holds a valid certificate with the agency and is compensated by another to perform services, construct, install, alter, or repair an OSSF.

(33) **Local governmental entity** - A municipality, county, river authority, or special district including an underground water district, [and a] soil and water conservation district, or public health district.

(34) **Maintenance** - The normal or routine upkeep, cleaning, or mechanical adjustments to an OSSF.

(35) **Maintenance company** - A person in the business of maintaining OSSFs. At least one individual in the company must hold an Installer II certificate or a Class D or higher wastewater operator certificate and be certified by the appropriate manufacturer's maintenance program for the proprietary unit being maintained.

(36) **Maintenance findings** - The results of a required performance check or component inspection on a specific OSSF by a valid maintenance company as outlined in the maintenance contract.

(37) **Manufactured housing community** - Any facility or area developed for lease or rental of space for the placement of two or more mobile homes.

(38) **Mound system** - A soil absorption disposal system which is installed above the natural grade and in or below an artificially created mound of earth.

(39) **Multi-unit residential development**- a building, structure or combination of structures which have been designed to contain units in which more than two families may reside.

(40) **NSF International** - National Sanitation Foundation International testing laboratories located in Ann Arbor, Michigan.

(41) **Natural soil** - Earthen materials deposited into place by natural processes and not disturbed by artificial processes.

(42) **Non-standard disposal** - All on-site disposal systems, components and materials not described in this chapter as standard and not marketed for sale in the state as a proprietary item.

(43) **Non-standard treatment** - All on-site sewage treatment processes not described in this chapter as "standard" or "proprietary" treatment processes.

(44) **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; or

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

(45) **On-site sewage disposal system** - One or more systems of treatment devices and disposal facilities that:

(A) produce not more than 5,000 gallons of waste each day; and

(B) are used only for disposal of sewage produced on a [the] site on which any part of [(including cluster systems) where] the system is located.

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

(47) **On-site waste disposal order** - An order adopted by local governmental entity and approved by the executive director. Approval of this order by the executive director grants authorized agent status to the local governmental entity.

(48) **Owner** - A person who owns an OSSF.

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

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

(51) **Planning material** - Plans and other supporting materials submitted to the permitting authority for the purpose of obtaining a permit to construct and operate an OSSF.

(52) **Platted** - Subdivided property recorded with the county/city in an official plat record.

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

(54) **Probation** - A formal procedure in which an individual or authorized agent is subject to an evaluation for a trial period to ascertain whether an individual should retain possession of a registration or certification as issued by the executive director or an authorized agent should retain delegation as an authorized agent.

(55) **Proprietary system** - An OSSF in which all or part of the treatment or disposal process is owned by a person and has a registered trademark or patent or utilizes a tradename or trademark.

(56) **Regional office** - A regional office of the Texas Natural Resource Conservation Commission.

(57) **Restrictive horizon** - A layer of the soil profile with a significant observable change in density, clay content, or particle size which restricts the vertical movement of water.

(58) **Revocation** - A formal procedure initiated by the executive director in which an authorized agent's delegation or an installer's, site evaluator's, or designated representative's registration or certification is rescinded by the commission.

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

(60) **Secondary Treatment** - The reduction of pollutants to the levels specified in §309.1 of this title (relating to Domestic Wastewater Effluent Limitation and Plant Siting).

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

(62) **Septic tank** - A watertight covered receptacle constructed to receive, store, and provide treatment to domestic sewage. Its function is to separate solids from the liquid, digest organic matter under anaerobic conditions, store the digested solids through a period of detention, and allow the clarified liquid to be disposed of by an approved method in accordance with this chapter.

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

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

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

(64) **Sewage disposal plan** - A technical report prepared by either a registered professional engineer or a registered sanitarian[,] having demonstrated expertise in on-site sewage disposal planning. The plan must include, but is not limited to, the location of structures, easements, wells, treatment units and disposal areas.

(65) **Single family dwelling** - A habitable structure constructed on, or brought to, its site[,] and occupied by members of one family.

(66) **Site evaluator** - An individual who holds a valid certificate with the agency and visits a site and conducts a pre-construction site evaluation which includes performing soil analysis, a site survey, and other criteria necessary to determine the suitability of a site for a specific OSSF.

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

(68) **Soil** - The unconsolidated mineral material on the surface of the earth that serves as a natural medium for the growth of plants.

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

(70) **Subsurface sewage facility** - A system which treats sewage and distributes the pretreated sewage effluent into a below ground level disposal area.

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

(72) **Uniform gravel size** - Gravel to be used in standard absorption drainfields that has been processed through shaker screens to produce a size passing one size screen and retained on another. The smaller screen shall be at least 50% of the size of the larger screen.

(73) **Water softening** - the removal of minerals causing hardness from water.

§285.8. Maintenance Contract.

(a) The installer of an on-site sewage disposal system shall provide the owner of the system with information regarding maintenance of the system at the time the system is installed.

(b) A permitting authority may not condition an on-site permit or the approval of an on-site permit for aerobic treatment systems serving single family residences located in a county with a population of less than 40,000.

(c) The owner of an aerobic treatment system for single-family residence located in a county with a population of less than 40,000 shall either maintain the system directly or through a maintenance contract upon conclusion of any such maintenance provided under a warranty. If the owner elects to maintain the system directly, the owner must, prior to performing any maintenance, obtain training for the system from an installer who has been certified by the manufacturer.

(d) This section does not affect any testing and reporting requirement or schedule as provided by this chapter.

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

§285.32

§285.32. Criteria for Sewage Treatment Systems.

(a) (No change.)

(b) Treatment processes - proprietary.

(1)-(3) (No change.)

(4) Approval of proprietary aerobic treatment systems. All agency approved proprietary aerobic treatment systems will be identified and published in a list of approved systems which may be obtained from the executive director. Only treatment systems which have been tested by and are currently listed by NSF International as Class I systems under NSF Standard 40 1996 ([1990]) or have been tested and certified as a Class I system in accordance with NSF Standard 40 (1996) by an American National Standard Institute (ANSI) or NSF International accredited testing institution shall be considered for approval by the executive director. All agency approved systems at the time of the effective date of this rule shall continue to be listed on the list of approved systems at the time of the effective date of this rule shall continue to be listed on the list of approved systems subject to retesting under the requirements of NSF Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997) [1991]. [In addition, all proprietary aerobic treatment systems undergoing testing by a certification institution

recognized by the executive director at the time of the effective date of this rule shall be considered for inclusion on the list of approved systems notwithstanding the fact that the certification institution does not have NSF or ANSI accreditation.] The manufacturers of proprietary treatment systems and the accredited certification institution must comply with all the provisions of NSF [International] Standard 40 (1996) and Certification Policies for Wastewater Treatment Devices (1997 [1991]).

(5) (No change.)

(c) (No change.)